

PROBLEM SOLVING

Knowing the difference between public and private*Friday, May 14, 2010***SUSAN PINKER****Dear Susan,**

Some of my friends and I were discussing the use of Facebook in hiring practices. It goes without saying that any person who allows anyone to access their pages is fair game, and most people seem to understand that limiting access is essential in protecting their privacy. The story circulating is that prospective employers have ways of getting into private Facebook pages. To me that would be unethical. Is it possible? As an employee, if I found out this had happened, what could I do about it?

*Hope***Dear Hope,**

The notion of privacy is elastic when it comes to the Internet. Officially you have to give explicit consent to someone who wants to collect, use or disclose your personal information - whether online or off. Unofficially, it's like gossip. How do you prove who started a rumour, and who blasted it to 700 of their most intimate Facebook friends? And what if one of those "friends," someone you've met once, is a future employer?

"You have data leaking out in various ways," says Rebecca Jeschke, a spokesperson for the Electronic Frontier Foundation, a non-profit research and advocacy organization dedicated to digital issues. "If you 'friend' somebody you don't know, or if someone is looking over your shoulder, they can gain access to your information."

There is no doubt that employers use the Internet, including Facebook, to research prospective candidates. The question is whether crossing relatively permeable Internet boundaries is legal or actionable in Canada.

Charles Morgan, a partner at McCarthy Tétrault LLP in Montreal, explains that from a privacy law perspective, there are basically two issues to consider. "Has the person consented to the information being collected? If not, does privacy law provide an exception to that requirement for consent?" he said.

Under Canadian law, an organization may only collect, use or disclose information without someone's consent if that information is publicly available. And what is publicly available is narrowly defined, Mr. Morgan said. According to federal regulations, it includes information a person discloses to a publication "including a book or newspaper, in printed or electronic form, that is available to the public, where the individual has provided the information."

Someone who is worried that a prospective employer has unlawfully gleaned information from his Facebook page could lodge a complaint with the federal privacy commissioner (http://www.priv.gc.ca/complaint/index_e.cfm). A legal analysis would then address whether the Facebook page is considered a "publication," whether everyone has access to that information, or whether it's restricted to a group of "friends," Mr. Morgan wrote in an e-mail. Another issue is whether the employer is doing anything unauthorized to get that information. Finally, did the job candidate publish the information himself, or was it distributed by someone else?

The nub seems to be that if I publish information myself that is considered "public," then an employer would not need my consent to make use of it.

To complicate things further, the federal Privacy Act applies to workers in federally regulated industries (such as financial institutions, telecommunications or transport). Other types of employment would fall under provincial privacy rules that would vary.

This legal quagmire is also subject to the Internet's Wild West atmosphere. A few weeks ago, Facebook changed its privacy settings (which define what it considers public information) and it is now easier for organizations to use the site for their own purposes, including to gather precious marketing data. So even if Facebook's 400 million users think they are controlling access via privacy settings that limit their pages to insiders, the site could be sharing this data with third parties, such as application developers. These entities - along with future, unspecified Facebook partners - could capture your intimate exchanges, not to mention your likes and dislikes, indefinitely. After all, who knows when this information might become useful?

Canada's Privacy Commissioner, Jennifer Stoddart, is alarmed about the possibilities for mischief. "More than half a million

developers will have access to this data," she said in an interview with The Globe and Mail, after Facebook relaxed its privacy controls. She was most concerned about Facebook's new "Instant Personalization" feature, which allows partner sites to cull your personal data, as well as the preferences of your friends, without your consent. (Sharing is the automatic default: If you want to opt out, you need to block out each Instant Personalization website, one by one.)

Facebook's partners are after enormous mountains of aggregated data, not that photograph of you in party mode at age 16. Still, users of Facebook and other social networking sites should follow the real estate maxim: Let the site member beware.

Susan Pinker is a psychologist and author of *The Sexual Paradox: Extreme Men, Gifted Women and the Real Gender Gap*. Her blog on the science of human relationships can be found at www.psychologytoday.com/blog/the-open-mind.

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