

Privacy and Access in British Columbia

B.C.'s Freedom of Information and Protection of Privacy Act

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Ministry of Finance

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Ministry
of Finance

Agenda

Introductions

This Session:

- A high level overview of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) including:

- Intro to FOIPPA
- Access
- Privacy
- Security

Our Branch

Privacy, Compliance and Training Branch Of the Corporate Information and Records Management Office (CIRMO)

- Responsible for FOIPPA, *Personal Information Protection Act (PIPA)*, *Document Disposal Act (DDA)*, and *Electronic Transactions Act (ETA)* and all policy, standards and directives that flow from them.
- Services, support and leadership to assist ministries and other public bodies in complying with FOIPPA
- Input and advice on legislative proposals and reviews
- Privacy training
- PIAs
- Privacy breach investigation

The Privacy Commissioner

Information and Privacy Commissioner

- Information and Privacy Commissioner is an independent Officer of the Legislature
- Elizabeth Denham is B.C.'s Information and Privacy Commissioner
- The Office of the Information and Privacy Commissioner (OIPC):
 - conducts reviews and investigations to ensure compliance with FOIPPA
 - mediates FOI disputes
 - comments on FOI and privacy implications of proposed legislative schemes or public body programs



Legislative Landscape

Freedom of Information and Protection of Privacy Act (FOIPPA)

public sector access and privacy legislation; applies to “public bodies” in B.C.

Personal Information Protection Act (PIPA)

private sector privacy legislation; applies to “organizations” (more than just businesses) in B.C.

Personal Information Protection and Electronic Documents Act (PIPEDA)

applies to federal works, undertakings or businesses (banks, airlines, and telecommunications companies) applies to the collection, use and disclosure of personal information in the course of a commercial activity and across borders.

Canada’s ***Access to Information Act*** and ***Privacy Act***

are the federal equivalents to the BC FOIPPA (access and privacy obligations for federal government institutions and the federally regulated)



Purposes of FOIPPA

Accountable to the public:

- A right of access to records,
- Limited exceptions to the right of access
- Independent review of decisions made under the Act.

Protects privacy:

- A right to request correction, and
- Preventing the unauthorized collection, use, or disclosure of personal information by public bodies.



Coverage of FOIPPA

APPLIES TO:

all **records** in the **custody** or under
the **control** of a **public body**



Public Bodies

- Ministries, Crown Corporations, Agencies, Boards, Commissions
- Local government, health care bodies, municipal police, educational bodies
- Governing bodies of professional organizations



Records

- Any information recorded or stored by any means whether in hard copy or in electronic format
- This includes books, documents, maps, drawings, photographs, text messages, letters, e-mails, telephone records, black books, vouchers, papers, etc...

Custody

- Physical possession
- May not be responsible for content
- Responsible for providing access to and security of the record
- Responsible for managing, maintaining, preserving and disposing of the record

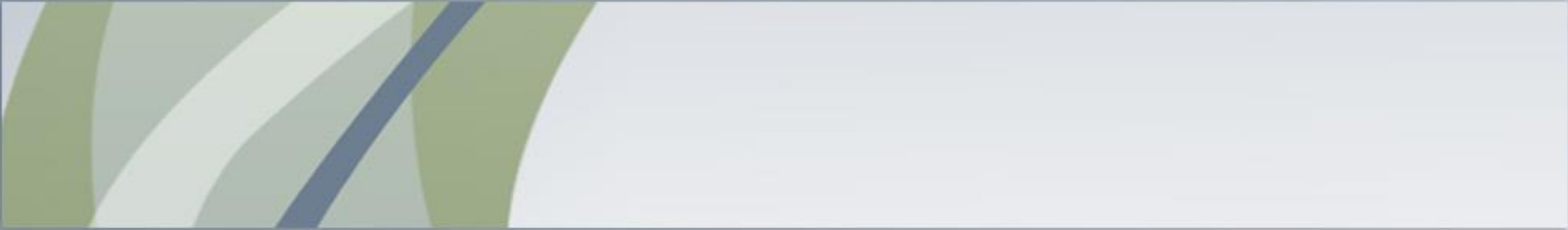


Control

- Authority to manage, restrict, regulate or administer the use or disclosure of a record

Indicators of control:

- Created by an employee of a public body,
- Created by a consultant for the public body,
- Specified in a contract,
- Subject to inspection, review or copying by the public body under contract.



**Access to Information
a.k.a.
Freedom of Information
(FOI)**



The Request Process

- Written request
- Sufficient detail to identify record sought
- Copy or original
- Must provide proof of authority if acting for another person
 - persons under 19 years of age
 - persons who have committees
 - deceased persons



Duty to Assist

- Openly, accurately and without delay
- Requirement to create records
- If the decision is that “no records exist” -- make sure that is correct
- If there are no records, tell applicant:
 - other sources for the records
 - other available records that are similar to what the applicant has requested.

Timelines & Fees

Timelines

30 business days

30 day extension possible- further extensions through the OIPC

Fees

- Locating, preparing, handling, and copying
- Limitations to what can be charged.
- Written estimates must be provided (track time!)
- Applicants may request a fee waiver
- Fees prescribed by regulation



Exceptions & Severing

- Must release unless an exception applies
- Disclosure should be the rule, not the exception
- Two types of exceptions:
 - Mandatory and Discretionary

Mandatory Exceptions

The head must not release requested information:

- Section 12: Cabinet confidences
- Section 21: Third party business information
- Section 22: Disclosure harmful to personal privacy
- Section 22.1: Related to abortion services

Discretionary Exceptions

The head of a public body may refuse to disclose requested information.

Two parts to applying a discretionary exception:

- Does the exception apply?
- Exercise discretion

Exercising Discretion

- Purpose of the Legislation
- Balance of interests
- Severing
- Historical practice
- Nature of the record
- Will disclosure increase public confidence?
- Age of the record
- Previous orders



Exercising Discretion

- The purpose of the Legislation
- Balance of interests (what is purpose of exception)
- Severing
- Historical practice
- Nature of the record
- Will disclosure increase public confidence?
- Age of the record
- Sympathetic or compelling need
- Previous orders

Tips for responding to requests

1. Communicate, communicate, communicate!
2. Raise awareness of legislated timelines and other requirements in FOIPPA
3. It's not personal – It's business!
4. Consider a 'staged' release of records



**Embarrassment
is not
an exception!**



Public Interest

Public Interest Paramount – s. 25

Overrides any other provision of the Act:

- Whether or not request for access made
- Must release *information*, without delay
- To the public, affected group or applicant
- Information about a risk of significant harm to environment or health or safety of the public or a group of people; or other disclosure which is, for any other reason, clearly in the public interest.



What is privacy?

What is Privacy?

- It is not defined in FOIPPA, PIPA or any legislation in Canada
- None of the statutes define “privacy” but aim to achieve it with rules for how personal information is to be collected, used and disclosed.
- Different types of privacy:
 - physical, spatial, informational



What is Privacy?

The foundation of privacy laws

Informational self determination

- an individual's personal information is their own
- to the extent possible, the individual controls how their personal information is collected, used and disclosed



Information Management Guiding Principles

Right Information

Right Person

Right Purpose

Right Time

Right Way

- Managed based on the “need to know” and least privilege principles
- Access only to the minimum amount of personal information required to perform employment duties
- Access permissions should be assigned consistently and kept up to date



A World Without Privacy

Ordering Pizza in the 21st century...Created by
the American Civil Liberties Union

[Link:](#)

<http://www.aclu.org/pizza/index.html?orgid=EA071904&MX=1414&H=1>



Personal Information

What is Personal Information?

“Personal information” means recorded information about an identifiable individual other than contact information”

Collection of Personal Information

- Key to protecting privacy
- Personal information can only be collected if:
 - Authorized under an Act
 - For law enforcement
 - Related directly to and necessary for an operating program or activity
 - Planning or evaluating a program or activity of the public body
 - By observation at a public event
 - Other authorities (domestic violence, provincial identity services)

How Personal Information is Collected

- Information must be collected directly from the individual, except in limited circumstances.
- Must notify the individual of the purpose, the legal authority, and who to contact with questions, except in limited circumstances.

Collection

Sample notification for collection:

This information is collected by *[name of public body]* under *[section]* of the *[name of enactment]* and will be used to *[purpose]*. Should you have any questions about the collection of this personal information please contact

[Position Title]

[Address]

[Phone Number]

Use of Personal Information

A public body may only use personal information:

- For the purpose for which it was obtained or compiled, or for a consistent purpose:
 - a reasonable connection to the original purpose, and
 - necessary to perform the duties of, or for operating a legally authorized program, of the public body
- If the individual has consented to the use.
- For a purpose for which the personal information has been disclosed to it under the Act.

Disclosure of Personal Information

- **Disclosure only in limited circumstances**
 - You could do a PIA to figure out if you have authority.
- **Inside versus outside Canada – important distinction**
 - 24 inside/outside Canada authorities
 - 10 inside Canada only authorities
- **Disclose based on a need to know**
 - limit distribution
 - limit content

Disclosure of Personal Information - Examples

Within Canada only:

- consistent purpose
- program planning or evaluation

On the web (outside of Canada):

- consent (written)
- public, voluntarily attended event (e.g. photos of ribbon cutting)
- social media engagement (e.g. via Facebook)
- under an enactment



Who needs to know?



Accuracy and Completeness

If your public body is using personal information to make a decision that directly affects the individual....

then....

You must make every reasonable effort to ensure that the personal information is accurate and complete.



Correction

The Right to Correction

- Individual has right to request correction of personal information
- Section 29 applies to factual errors or omissions in personal information, not to expressions of judgement
- The right to request correction is distinct from the public body's duty to annotate
- Section 29 does not function as an avenue for appeal



Retention

- Must retain personal information for at least 1 year after it is used to make a decision that directly affects the individual so that the individual has a reasonable opportunity to access it;
- This is the minimum standard – ensure that you also meet other applicable legal and policy requirements.

Security

- Reasonable security arrangements
- Appropriate and proportional
- Storage & Access must be in Canada
- Safeguards should include:
 - Physical measures
 - Technological measures
 - Policies/Procedures

Information Incidents

Information Incident Response

Step 1 - Report

Step 2 - Recover

Step 3 - Remediate

Step 4 - Prevent

Useful Links

Privacy, Compliance and Training Branch:

<http://www2.gov.bc.ca/gov/content/governments/services-for-government/information-management/privacy>

Policy & Procedures Manual; PIA Process with Template; Contracting link to PPS; etc): <http://www2.gov.bc.ca/gov/content/governments/services-for-government/information-management/privacy/resources>

The Freedom of Information and Protection of Privacy Act:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00

BC Office of the Information and Privacy Commissioner:

<http://www.oipc.bc.ca/>



Useful Resources

FOIPPA Policy and Procedures Manual

[http://www.cio.gov.bc.ca/cio/priv leg/manual/index.page?](http://www.cio.gov.bc.ca/cio/priv_leg/manual/index.page?)

Key Steps to Responding to Privacy Breaches -

<http://www.oipc.bc.ca/guidance-documents/1428>

Protecting Personal Information Outside the Office

<http://www.oipc.bc.ca/guidance-documents/1447>



Questions?



**BC Privacy and Access Helpline:
250-356-1851**

(Enquiry BC 1 800 663-7867)

Privacy.Helpline@gov.bc.ca



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