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Human Resources and Social Development Canada

DEPARTMENTAL PRIVACY GUIDELINES

NOTE: The HRSDC Departmental Privacy Guidelines were created in 2007 and reflect the department as it existed at that time. Updated guidelines will be developed in 2010 – 2011.

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1 INTRODUCTION

The objective of these guidelines is to ensure the effective and consistent application of the *Departmental Privacy Policy*. They will help staff understand their responsibilities regarding the administration of personal information in accordance with the *Privacy Act* (PA), its accompanying *Privacy Regulations*, and other applicable legislation and policies. This includes Part 4 of the *Department of Human Resources and Skills Development Act* (DHRSD Act) and Part 2 of the *Department of Social Development Act* (DSD Act), section 104 et al. of the *Canada Pension Plan* (CPP), and section 33 et al. of the *Old Age Security Act* (OAS Act).

Although the Department now consists of Human Resources and Social Development Canada (HRSDC) including Service Canada, programs under the old Human Resources and Skills Development Canada are still subject to the DHRSD Act *with the exception of the Social Insurance Register, which is governed by subsection 139(5) of the Employment Insurance Act (EI Act)*, while those of the former Social Development Canada fall under the DSD Act and/or the CPP, and OAS Act

The guidelines explain precisely how these Acts, and the PA, govern the protection of personal information within HRSDC. They are consistent with the *Privacy Act*, *Privacy Regulations*, and Treasury Board Secretariat (TBS) policies, which set out clear roles for federal government departments and agencies when dealing with personal information.

2 WHAT IS "PERSONAL INFORMATION"?

The *Privacy Act* defines "personal information" as information about an identifiable individual that is recorded in any form, and includes information such as:

- the race, national or ethnic origin, colour, religion, age, marital status of the individual;
- the education or financial transactions of the individual;
- the medical, criminal or employment history of the individual;
- any identifying number or symbol or other particular assigned to the individual;
- the address, fingerprints, blood type of the individual;
- correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature;
- the personal opinions or views of the individual except where they concern another individual;
- the personal opinions or views of another individual about the individual, and
- the name of the individual where it appears with other personal information about the individual or where disclosure of the name itself would reveal information about the individual.

In addition to the above list, which is not exhaustive, information relating to unincorporated entities and/or partnerships and sole proprietorships, may constitute personal information about the owner(s) and therefore must be treated in accordance with the *Privacy Act*. Moreover, assessments of an employee's job performance, conflict

of interest declarations, or reports of disciplinary actions are also considered personal information of the employee since they relate to the individual, not to the employee's position.

However, selected elements of information are not protected by the use and disclosure provisions of the *Privacy Act*. They are:

- information concerning the position or functions of a government institution officer or employee, including but not limited to the individual's position title, business address and telephone, classification and salary range;
- information about the services performed by an individual under contract for a government institution;
- information about a discretionary benefit of a financial nature conferred on an individual ; and,
- information about an individual who has been deceased for more than twenty years.

For a more detailed description of what constitutes personal information, please refer to section 3 of the *Privacy Act* at the following URL: <http://laws.justice.gc.ca/en/P-21/95414.html>.

3 THE CODE OF FAIR INFORMATION PRACTICES OF THE *PRIVACY ACT*

Sections 4 to 8 of the *Privacy Act*, commonly referred to as the Code of Fair Information Practices, govern the collection, use, disclosure, retention, and disposal of personal information. HRSDC staff must comply with the following requirements when handling personal information.

Collection

Pursuant to section 4, HRSDC must only collect personal information that directly relates to its operating programs or activities.

To collect personal information for its programs or activities HRSDC must have parliamentary authority for the program or activity and a demonstrable need for each piece of information collected in order to carry out the program or activity. Consent is not a substitute for a department's absence of authority to collect. Wherever possible, collect personal information that is intended to be used for an administrative purpose directly from the individual to whom it relates except in the following limited and defined circumstances: where the individual authorizes otherwise, where the personal information may be disclosed to HRSDC under subsection 8(2) of the PA, or when direct collection may result in the collection of inaccurate information or defeat the purpose or prejudice the use for which the information was collected, for example, impact negatively on an authorized investigation.

Ensure that the personal information collected that is used for an administrative purpose is as accurate, up-to-date and as complete as possible to minimize the possibility that inappropriate information may be used to make a decision about the individual.

Inform individuals at the time of collection of the following:

purpose of the collection;
how the personal information will be used;
whether personal information will be made available, and if so, to whom
and for what purpose;
the parliamentary authority for HRSDC's collection, use and/or disclosure
of personal information;
whether the collection is voluntary or required by law;
of possible consequences of refusing to respond;
of their rights of access to, and protection and correction of, incorrect
personal information under the *Privacy Act*, and
of the registration number of the Personal Information Bank in which the
personal information will be retain

Staff should ensure that third parties who collect personal information on behalf of HRSDC are bound by contractual clauses, and further, that they are provided with directives on the management of personal information to enable them to understand and apply the departmental privacy policy. The document entitled *Privacy Clauses for Use in Contracts* is available on the HRSDC intranet.

Use

Without the consent of the individual, or as authorized by law, federal institutions may use personal information only for the purpose(s) for which the information was obtained or compiled.

A primary use involves information required for the delivery of the program. The secondary use of information and the purpose for which the information will be used (referred to as "consistent use") should also be considered when determining what personal information is required to meet operational or legislated requirements.

The Access to Information and Privacy (ATIP) Coordinator of HRSDC and the Program Executive Heads must approve all consistent uses.

The use of information for policy analysis, research or evaluation purposes must comply with the criteria set out in sections 39 and 33 of the DHRSD Act and the DSD Act respectively, as well as section 104.101 of the CPP and section 33.12 of the OAS Act.

Programs are responsible for obtaining the necessary approvals for any new purpose or use consistent with the original purpose prior to proceeding.

Ensure that only authorized staff have access to personal information and only as necessary to fulfill their assigned duties and functions. Apply the TBS Government Security Policy requirement of "need-to-know" as a principle to regulate employee access to systems and programs that involve personal information.

Also refer to Appendix A - Consistent Use.

Retention

Legal and policy requirements:

Personal information that has been used for an administrative purpose must be retained a minimum of two years or longer, as prescribed by the program's established retention schedule. For example, records related to the "Application for Employment" must be retained according to the following Retention and Disposal Standards: "solicited and unsolicited applications that have been considered in a staffing process are retained for 2 years and then destroyed. Unsolicited applications that have not been considered in a staffing process are retained for 6 months and then destroyed". Section 3 of the PA defines

"administrative purpose" in relation to the use of personal information about an individual as "the use of that personal information in a decision-making process that directly affects that individual to whom the personal information relates." Programs that do not have an established retention and disposal schedule for personal information under their control should determine whether a Records Disposition Authority (RDA) exists. An RDA is the instrument that the Librarian and Archivist of Canada issues to enable government institutions to dispose of records that no longer have operational or other utility. Please consult Corporate Material & Recorded Information Management's *Records Retention and Disposition Guide* at the following Service Canada intranet site:

http://fas-sfa.hq-ac.prv/admin/libinfo/e_rd-guide.shtml

Corporate Material & Recorded Information Management's intranet site on *Recorded Information Management* provides additional information on other aspects of the retention process, that is, how to:

- determine the retention period;
- establish appropriate and effective controls and schedules for information retention; and,
- ensure that all practices are fully documented

http://fas-sfa.hq-ac.prv/admin/libinfo/home_e.shtml

Where no RDA exists, information must be retained until such time as one is established.

Disposal

As a general rule, personal information should be disposed of when the retention period has expired.

Authority for disposal must be obtained from the Librarian and Archivist of Canada in the form of an RDA. An RDA stipulates the mode of final disposition, usually destruction or transfer to Library and Archives of Canada.

Where no RDA exists, the information must be retained and protected from destruction, deterioration or loss indefinitely until such time as the disposition authority has been obtained.

The *Information Classification Guide* indicates the modes of destruction and transmission for each category of information (e.g., Protected, Classified, etc.). It can be accessed on Corporate Security, Investigations and Emergency Response Management's intranet site at:

http://fas-sfa.hq-ac.prv/admin/se/classification_guide.pdf

Corporate Material & Recorded Information Management's intranet site on *Recorded Information Management* provides additional information on other aspects of the disposal process, that is, how to:

- establish appropriate and effective controls and schedules for information disposal; and,
- ensure that all practices are fully documented.

http://fas-sfa.hq-ac.prv/admin/libinfo/home_e.shtml

Disclosure

Subsection 8(1) of the *Privacy Act* applies to personal information under the control of a government institution.

8. (1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

The disclosure of personal information without the consent of the person concerned is permitted in circumstances specified in subsection 8(2) of the PA. Nevertheless, if another Act contains a provision that prohibits the release of personal information, the other Act has priority over subsection 8(2) of the PA.

In this regard, Part 4 of the DHRSD Act and Part 2 of the DSD Act, as well as section 139(5) of the *Employment Insurance Act*, section 104 et al. of the CPP and 33 et al. of the OAS Act have disclosure provisions that override subsection 8(2) of the PA.

The Acts cited above may be accessed on the Department of Justice Web site, as follows:

Part 4 of the *Department of Human Resources and Skills Development Act*
<http://laws.justice.gc.ca/en/H-5.7/243711.html#rid-243756>;

Part 2 of the *Department of Social Development Act*
<http://laws.justice.gc.ca/en/S-11.5/259559.html#rid-259592>;

Subsection 139(5) of the *Employment Insurance Act*
<http://laws.justice.gc.ca/en/E-5.6/238738.html#rid-238772>;

Section 104 et al. of the *Canada Pension Plan*
<http://laws.justice.gc.ca/en/C-8/234784.html#rid-234791>;

Section 33 et al. of the *Old Age Security Act*
<http://laws.justice.gc.ca/en/O-9/253898.html#rid-253912>.

Legal and policy requirements:

Inform individuals at the point of collection (i.e., via an application form or verbally) of all known disclosures required to administer the program or activity, specifying to whom the personal information will be made available and why. Document all disclosures of personal information for all programs and activities in a Personal Information Bank (PIB) in Info Source, a TBS publication (See Appendix E). Maintain an audit trail of what personal information has been disclosed, to whom, for what purpose, and under what authority, and keep a record of disclosures (i.e., electronic or paper trail noting in the pertinent file what personal information was disclosed, for what purpose and to whom). Before disclosing personal information to a contractor, service provider, or any other third party, an information sharing agreement, a contribution agreement or a contract must be in place to ensure that privacy, confidentiality and security requirements are met.

As indicated below, the ATIP Directorate of HRSDC will develop two tools to assist programs in establishing information sharing and contribution agreements. The third tool, namely *Privacy Clauses for Use in Contracts*, is now available on the HRSDC intranet.

1. *Guidelines on Information Sharing Agreements* (to be developed);
2. *Privacy Clauses for Use in Contribution Agreements* (to be developed);
3. *Privacy Clauses for Use in Contracts*

4 PRIVACY CODES OF THE NEW DEPARTMENTAL LEGISLATION

A Overview

This section provides advice and guidance regarding the protection of personal information under the provisions of Part 4 of the *Department of Human Resources and Skills Development Act* (DHRSD Act) and Part 2 of the *Department of Social Development Act* (DSD Act). These Parts, both entitled "Protection of Personal Information," are identical and are commonly referred to as the "Privacy Codes." For a detailed explanation of these two codes, please refer to section 4 C of these guidelines, below.

Please note that the *Canada Pension Plan* (CPP) and *Old Age Security Act* (OAS Act) privacy provisions have been amended to mirror, for the most part, those of the two Privacy Codes, including the new restrictions regarding research activities.

Regarding the provisions of the CPP and OAS Act, the following guidelines provide advice and guidance concerning:

a) the protection of, and access to, personal information for clients or their representatives;
http://intracom.hq-ac.prv/isp-psr/reference/policy/prot-accinf_e.shtml

b) the handling of requests for personal information for the purpose of criminal or civil proceedings.
http://intracom.hq-ac.prv/isp-psr/reference/policy/prot-relinf_e.shtml

The Privacy Codes and the CPP and OAS Act privacy provisions :

- achieve more consistency in the rules governing disclosure of personal information for all programs administered by HRSDC;
- include rigorous principles to guide the use of personal information for research purposes; and,
- include an offence provision for knowingly using or disclosing personal information other than in accordance with the codes.

Both Privacy Codes, as well as the CPP and the OAS Act privacy provisions, establish the rules that apply to the protection and the making available of information obtained and prepared by Human Resources and Social Development Canada (formerly Human Resources and Skills Development and Social Development Canada).

The Privacy Codes and the CPP and OAS Act privacy provisions also address a request by the Privacy Commissioner for statutory safeguards surrounding data used for research purposes. The Commissioner asked the former Department of Human Resources Development Canada to establish such safeguards following the dismantling of the Longitudinal Labour Force File in 2000.

Although the Privacy Codes' provisions and the CPP and OAS Act privacy provisions permit personal information to be shared within HRSDC, they are significantly more restrictive in regard to the sharing of personal information with other federal institutions to administer or enforce a non-HRSDC-related law or activity.

B Offence provisions

Four departmental statutes contain offence provisions that apply to a person or body who knowingly discloses or uses privileged information inappropriately, that is, contrary to the legislation. The relevant sections are cited below.

Section 42 of the *Department of Human Resources and Skills Development Act*:

42. (1) Every person or body commits an offence if they knowingly make available information that is privileged under this Part, or knowingly use or allow such information to be used, otherwise than in accordance with this Part or a condition or agreement referred to in subsection 33(2) or section 35, 36 or 38.

(2) An individual who is guilty of an offence under subsection (1) is liable on summary conviction to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

(3) A body or a person, other than an individual, who is guilty of an offence under subsection (1) is liable on summary conviction to a fine of not more than \$100,000.

Section 36 of the *Department of Social Development Act*:

36. (1) Every person or body commits an offence if they knowingly make available information that is privileged under this Part, or knowingly use or allow such information to be used, otherwise than in accordance with this Part or a condition or agreement referred to in subsection 27(2) or section 29, 30 or 32.

(2) An individual who is guilty of an offence under subsection (1) is liable on summary conviction to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

(3) A body or a person, other than an individual, who is guilty of an offence under subsection (1) is liable on summary conviction to a fine of not more than \$100,000.

Subsection 104.09 of the *Canada Pension Plan*:

104.09 (1) Every person or body commits an offence who knowingly makes available information that is privileged under this Act, or who knowingly uses or allows such information to be used, otherwise than in accordance with this Act, any condition referred to in section 104.01, 104.03, 104.05 or 104.06, or an agreement referred to in section 104.05, 104.06 or 105.

(2) An individual who contravenes subsection (1) is guilty of an offence punishable on summary conviction and liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

(3) A body or a person, other than an individual, who contravenes subsection (1) is guilty of an offence punishable on summary conviction and liable to a fine of not more than \$100,000.

Subsection 33.09 of the Old Age Security Act:

33.09 (1) Every person or body commits an offence who knowingly makes available information that is privileged under this Act, or who knowingly uses or allows such information to be used, otherwise than in accordance with this Act, any condition referred to in section 33.01, 33.03, 33.05 or 33.06 or an agreement referred to in section 33.05, 33.06 or 39.

(2) An individual who contravenes subsection (1) is guilty of an offence punishable on summary conviction and liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

(3) A body or a person, other than an individual, who contravenes subsection (1) is guilty of an offence punishable on summary conviction and liable to a fine of not more than \$100,000.

Reporting an alleged offence

Process to handle an allegation of an offence:

Allegations of inappropriate use or disclosure of personal information should be reported by an employee to his/her Director.

C Part 4 of the DHRSD Act and Part 2 of the DSD Act

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1. Introduction

1.1 Purpose

The purpose of these guidelines is to provide advice and guidance to staff with respect to the protection of personal information under the provisions of Part 4 of the *Department of Human Resources and Skills Development Act* (DHRSD Act), and Part 2 of the

Department of Social Development Act (DSD Act), both entitled "Protection of Personal Information," and commonly referred to as the "Privacy Codes."

1.2 What is covered in the Guidelines

The Guidelines address:

- the protection and disclosure of personal information;
- the Regulations in regard to disclosure to federal institutions;
- the principles for the use of information for research purposes; and,
- the offence provisions.

1.3 Effective date

The provisions of Part 4 of the DHRSD Act and of Part 2 of the DSD Act, described in these guidelines came into force on October 5, 2005. They are both referred to as the Privacy Codes.

1.4 For more information

Questions on policy interpretation with regard to these guidelines should be addressed to the HRSDC Access to Information and Privacy (ATIP) Directorate at National Headquarters.

Questions on operational matters should be directed to the relevant program officials.

1.5 Relationship to *Privacy Act*

The *Privacy Act* (PA), which came into force in 1983, governs the collection, use, disclosure, retention and disposal of personal information within federal institutions. Federal government institutions subject to the PA must comply with its provisions. The disclosure of personal information without the consent of the person concerned is permitted in circumstances specified in subsection 8(2) of the PA. Nevertheless, if another Act contains a provision that prohibits the release of information except in accordance with that provision, the other Act has priority over subsection 8(2) of the PA. In this regard, the DHRSD Act, Part 4 – Protection of Personal Information –, and the DSD Act, Part 2 – Protection of Personal Information – contain disclosure provisions that override subsection 8(2) of the PA.

1.6 Privacy Codes

The Privacy Code in the DHRSD Act covers all former Human Resources and Skills Development Canada programs and activities, with the exception of the Social Insurance Registry, which is still governed by section 139(5) of the *Employment Insurance Act*.

The Privacy Code in the DSD Act applies to all former Social Development Canada programs and activities, other than those governed by the CPP and the OAS Act.

1.7 Main Principle

The Privacy Codes and the CPP and OAS Act privacy provisions establish the basic rule that personal information is privileged and must not be made available except in accordance with their provisions.

Thus, personal information obtained or prepared by the former Human Resources and Skills Development Canada may only be shared in accordance with the Privacy Code in the DHRSD Act, with the exception of information contained in the Social Insurance Registry.

Personal information obtained or prepared by the former Social Development Canada may only be shared in accordance with the Privacy Code in the DSD Act, the CPP and OAS Act.

2. Definitions

Under Part 4 of the DHRSD Act, and Part 2 of the DSD Act, the following definitions apply:

2.1 Administration

“Administration”, in respect of programs, includes development, operation and evaluation.

2.2 Federal Institution

“Federal Institution” means a department or any other body referred to in a schedule to the *Financial Administration Act*.

2.3 Information

“Information” means personal information as defined in section 3 of the PA. However, these restrictions set out in the PA and the departmental Privacy Codes respecting the use and making available of information do not apply to the information described in paragraphs 3(j) to (m) of the PA. For additional clarification, please refer to Section 2 of this document, What is “Personal Information”.

The definition includes information about an identifiable individual that is recorded in any form. It includes, but is not limited to, race, national or ethnic origin, colour, religion, age, marital status, education, medical, criminal or employment history, information relating to the individual’s financial transactions, any identifying number, symbol, or other particular assigned to the individual.

It also includes the address, fingerprints, blood type, personal opinions or views, or opinions of another individual about the individual.

The definition encompasses information that HRSDC obtains (from clients, employers, government agencies or other sources) or produces from data gathered or already available.

2.4 Program

“Program” means any program the administration or enforcement of which is the responsibility of the Minister or the Commission and includes any legislation, policy or activity the administration or enforcement of which is their responsibility, other than the CPP and OAS Act.

The definition includes the human resources function of HRSDC.

2.5 Public Officer

“Public officer” means an officer or employee of a federal institution, and as prescribed in the Regulations, also includes a person employed in a federal institution or whose services are required by a federal institution, on a casual or temporary basis or under a student employment program.

3. Provisions of the Privacy Codes

3.1 Individuals accessing own information

DHRSD Act - 33(1) / DSD Act - 27(1)

In addition to an individual’s right of access under the PA, and subject to the exemptions and exclusions provided in that Act, information may be made available to the individual on their request in writing to the Minister.

Written requests that mention the PA must be forwarded to the HRSDC Access to Information and Privacy (ATIP) Coordinator. Only HRSDC NHQ Public Rights Administrators have the delegated authority to withhold information where a formal request is made pursuant to the PA.

3.2 Members of Parliament and representatives

DHRSD Act - 33(2) / DSD Act - 27(2)

On the conditions that the Minister considers advisable and subject to the exemptions and exclusions provided in the PA, an individual, his representative or member of Parliament inquiring on behalf of an individual may be provided with information about that individual if the information is relevant to a matter that affects the individual under an HRSDC program or service.

3.3 Representatives

DHRSD Act - 33(2) / DSD Act - 27(2)

A representative inquiring on behalf of an individual must be authorized by the individual to whom the information pertains before information may be made available to him or her. Authorization consists of written documentation, either a consent form or letter signed by the individual.

It should be noted that consent must be voluntary, the specific purpose for which consent is being given must be stated, the information to be released must be identified, and consent must be signed and dated by the individual to whom the information pertains.

Please refer to Appendix B: Appointment of a Representative.

3.4 Program administration or enforcement

DHRSD Act - 34(1) / DSD Act - 28(1)

Information obtained or prepared by an HRSDC program may be disclosed to a third party (e.g., individual, contractor, organization, provincial/territorial government, federal department, and the like) for the administration or enforcement of the program for which it was obtained or prepared. Administration in respect of programs includes development, operation, evaluation, and audit. For example, information may be disclosed to process a benefit claim or an appeal, for overpayment recovery, file storage, and for the administration or enforcement of the law.

Please note that before any personal information is disclosed to:

- a third party acting on behalf of, or performing services for, HRSDC; or
- other federal institutions or levels of government, a contract, memorandum of understanding, or other appropriate legal instrument must be in place.

All such arrangements must be reviewed by the HRSDC ATIP Directorate in consultation with Legal Services, as required, to ensure that appropriate privacy clauses are included (in some cases, a separate information sharing agreement must be developed).

Some standard policies and guidelines are available to help programs develop agreements. These tools can be found on the departmental ATIP intranet site.

Note: Notwithstanding this provision, information received from certain third parties or federal departments may be subject to legislated restrictions on secondary disclosure. For example, there are disclosure restrictions surrounding information obtained under an agreement with the Canada Revenue Agency. Therefore, please consult the relevant agreement to ensure that any restrictions on secondary disclosure are respected.

3.5 Within the Department

DHRSD Act - 34(2) / DSD Act - 28(2)

Information may be shared amongst the programs of the former Human Resources and Skills Development Canada.

Information may also be shared amongst the programs of the former Social Development Canada.

The sharing of information is subject to the following restrictions:

- the information must be directly related to the administration of an HRSDC program or activity;
- there must be a demonstrable need;

only information deemed essential (i.e., the minimum) to administer the program may be shared; and
only designated program officials may request or disclose information for purposes of program or activity administration.

Departmental policy also requires that any sharing of information amongst programs be subject to the terms and conditions of an agreement.

Finally, all disclosures must be documented by an audit trail. To this end, all programs must establish a process to authorize and document the disclosure of their information to another HRSDC program. Please refer to the document entitled *Policy and Guidelines for the Implementation and Monitoring of Audit Trails within HRSDC*.

Should your program require some assistance on establishing the audit process, please consult with the HRSDC NHQ ATIP Directorate.

3.6 Between the legislative regimes of HRSDC and SDC

DHRSD Act - 35(1) / DSD Act - 29(1)

HRSDC programs, including those of Service Canada, are still governed by the DHRSD Act, the DSD Act, the CPP and the OAS Act. These Acts all permit the sharing of information amongst HRSDC programs for administrative purposes.

The sharing of information is subject to the following restrictions:

the information must be directly related to the administration of an HRSDC program or activity;
there must be a demonstrable need;
only information deemed essential (i.e., the minimum) to administer the program may be shared; and
only designated program officials may request or disclose information for purposes of program or activity administration.

Finally, all disclosures must be documented by an audit trail. To this end, all programs must establish a process to authorize and document the disclosure of their information to another HRSDC program.

3.7 Other federal institutions

DHRSD Act - 35(2) / DSD Act - 29(2)

Information may be provided to other federal institutions to administer or enforce a federal or provincial law or activity, provided the institution and the purpose for which the information is made available are prescribed in the departmental Regulations. It is a legal requirement to conclude an information sharing agreement before information is made available to another federal institution; the information must be used only for the purposes specified in the agreement. All agreements, letters of understanding and contracts must be reviewed by the HRSDC ATIP Directorate in consultation with Legal Services, as required.

The DHRSD Act Regulations include the following federal institutions:

the Canada Revenue Agency for the administration or enforcement of the *Income Tax Act*;
Statistic Canada for the administration or enforcement of the *Statistics Act*;
the Department of Citizenship and Immigration for the administration or enforcement of the *Immigration and Refugee Protection Act*;
the Public Service Commission for the administration or enforcement of the *Public Service Employment Act*;
the Canadian Security Intelligence Service for the administration or enforcement of the *Canadian Security Intelligence Service Act*;
the Department of Justice (Attorney General of Canada) for the administration of activities conducted with respect to legal proceedings and activities related to mutual legal assistance under an agreement;
the Library and Archives Canada for the administration or enforcement of the *Library and Archives of Canada Act*;
the Royal Canadian Mounted Police for the administration of the following activities, namely,
 enforcement of the laws of Canada or a province,
 carrying out a lawful investigation, or
 exercising mutual legal assistance under an agreement

The DSD Act Regulations include the following federal institutions:

the Canada Revenue Agency for the administration or enforcement of the *Income Tax Act*;
the Department of Justice (Attorney General of Canada) for the administration of activities conducted with respect to legal proceedings and activities related to mutual legal assistance under an agreement;
the Library and Archives Canada for the administration or enforcement of the *Library and Archives of Canada Act*;
the Royal Canadian Mounted Police for the administration of the following activities, namely,
 enforcement of the laws of Canada or a province,
 carrying out a lawful investigation, or
 exercising mutual legal assistance under an agreement

Nevertheless, it should be noted that HRSDC may disclose to other federal departments/agencies not listed in the Regulations provided the legislation under which the information is requested contains a "notwithstanding clause." Examples of statutes with a notwithstanding clause include the following: the *Auditor General Act*, administered by the Auditor General of Canada and the *Public Service Staff Relations Act*, administered by the Public Service Commission of Canada.

Questions on whether a particular federal Act has a notwithstanding clause or the addition of federal institutions to the HRSDC or SDC Regulations, should be directed to the HRSDC ATIP Directorate.

3.8 Provincial authorities

DHRSD Act - 36(1) / DSD Act - 30(1)

Information may be made available to the government of a province, or to a public body created under the law of a province, for the administration or enforcement of a federal law or activity or a provincial /territorial law. It is a legal requirement to conclude an

information sharing agreement before any information is made available. All information sharing agreements and letters of understanding must be reviewed by the HRSDC ATIP Directorate in consultation with Legal Services, as required.

The information made available must be limited to the minimum required to administer or enforce the federal law or activity or the provincial/territorial law and must only be used for the purposes outlined in the agreement.

Please note that HRSDC has numerous agreements with all provinces/territories. For questions relating to making HRSDC program information available to provincial/territories authorities, please consult the relevant program or the HRSDC ATIP Directorate.

3.9 Foreign states and bodies

DHRSD Act - 36(2) / DSD Act - 30(2)

Information may be made available to the government of a foreign state, an international organization of states, etc., for the administration or enforcement of a law. It is a legal requirement to conclude an information sharing agreement before any information is made available. All information sharing agreements and letters of understanding must be reviewed by the HRSDC ATIP Directorate in consultation with Legal Services, as required.

The information made available must be limited to the minimum required to administer or enforce a law of the foreign state or international organization of states and must only be used for the purposes outlined in the agreement.

Guidelines on Information Sharing Agreements will be developed.

For questions relating to making information available to foreign authorities, please consult with the HRSDC ATIP Directorate.

3.10 Secondary release of information

DHRSD Act - 35(3), 36(3) / DSD Act - 29(3), 30(3)

Information provided under sections 35(2) and 36(1) or (2) of the DHRSD Act or sections 29(2) and 30(1) or (2) of the DSD Act shall not be made available to any other person or body unless, a) the Minister considers it advisable; b) the information is made available for the same purpose; and c) it is subject to conditions agreed upon by the Minister and the federal institution, the government, public body, organization or institution (foreign states and bodies).

The Department must advise its partners that it is an offence to release any information provided by HRSDC unless an agreement allows the prescribed federal institution, government of a province or foreign state to make the information available.

3.11 Public interest

DHRSD Act - 37(1), 37(2) / DSD Act - 31(1), 31(2)

Information may be made available at the discretion of the Minister if the Minister is of the opinion that the public interest in disclosure clearly outweighs any invasion of privacy or that disclosure would clearly benefit the individual to whom the information relates.

This provision mirrors those of the *Privacy Act* and permits two types of disclosures:

Public interest outweighs invasion of privacy. This is used only in the most serious of situations, that is, life or death situations; examples include health or medical emergencies, terrorism, or national disaster.

HRSDC has an obligation to make information available when the safety or health of its employees or the public is at stake. At the discretion of authorized officials, information may be made available to third parties, including police authorities. Disclosure would clearly benefit the individual to whom the information relates.

This part of the provision is used where information may be made available on the grounds of "benefit to the individual," as in the following examples:

disclosure of information to assist in locating an individual who has monies owing to him/her;

disclosure of information to assist in determining the owner of lost or stolen property.

Employees should contact the HRSDC ATIP Directorate before releasing any information.

Subsection 37(2) of the DHRSD Act or 31(2) of the DSD Act requires HRSDC to notify the Privacy Commissioner where information is to be disclosed in the public interest or if disclosure would clearly benefit the individual to whom the information relates.

Notification is the responsibility of the HRSDC ATIP Directorate.

4. Provisions concerning the conduct of research activities

It is the policy of HRSDC that, wherever possible, information used for policy analysis, research, or evaluation activities should not include information that can identify an individual. Such information should be subject to a process that masks or removes personal identifying information.

However, whether that information is masked or unmasked, it still constitutes personal information.

4.1 Requirements to make information available for research or statistical purposes

DHRSD Act - 38 / DSD Act - 32

Information may be made available for research or statistical purposes to an external party such as a person, organization, federal institution, provincial or territorial government, or foreign state if:

the Minister is of the opinion that the research, or statistical purposes are consistent with the guiding principles set out in paragraphs 39(1)(a) to (e) of the DHRSD Act or with 33(1)(a) to (e) of the DSD Act, which are outlined in sub-section 4.3 of these guidelines (see below);

the Minister is of the opinion that the purpose for which the information is made available cannot reasonably be accomplished unless the information is provided in a form that may identify the individual to whom it relates. The individual/organization must be able to demonstrate to HRSDC why they require individual level data to carry out a policy analysis, research, evaluation or statistical activity; and, the information is made available subject to conditions set out in an agreement. A formal agreement or contract with the third party must be signed prior to the disclosure of the personal information. The third party must undertake in the agreement not to subsequently disclose the information in a form that may reasonably be expected to identify the individual. All formal agreements and contracts must be reviewed by the HRSDC ATIP Directorate in consultation with Legal Services, as required.

4.2 Research activities *between* the former SDC and HRSDC

The disclosure of information for research activities between former SDC and former HRSDC employees (now HRSDC including Service Canada) is not subject to sections 38 of the DHRSD Act and 32 of the DSD Act. The disclosure of personal information does not require an agreement or contract.

Departmental officials, however, must also meet the principles outlined in sub-section 4.3 of these guidelines (see below) when using personal information for the purpose of policy analysis, research and evaluation activities.

4.3 Guiding principles for use of information for research activities

DHRSD Act - 39(1) / DSC Act - 33(1)

The use of information for internal policy analysis, research, and evaluation activities must be guided by the following principles:

the object of the policy analysis, research, or evaluation is consistent with the powers, duties and functions of the Minister; for example, the evaluation by a province of a program related to labour market policy development could be deemed consistent with the mandate of the Department;

the use of the information is consistent with any agreement under which the information was obtained;

the results of the policy analysis, research or evaluation will be made available only in accordance with this Part and any agreements under which the information was obtained;

the policy analysis, research, or evaluation, would be difficult or impossible if the information were not used; and,

the policy analysis, research, evaluation activity is in the public interest.

4.4 Databank Review Committee

All policy analysis, research, and evaluation activities that require the use of unmasked personal identifiers and/or the connection of separate databanks must be reviewed by the Databank Review Committee (DRC) and approved by the Deputy Minister. The DRC is a

joint HRSDC/Service Canada committee that reviews project proposals for compliance with departmental legislation, policies, and privacy best practices.

For more information, please refer to the policy documents entitled *Governance Protocol for Conducting Policy Analysis, Research, and Evaluation Activities* and the *Guidelines for Conducting Surveys*, available via the HRSDC intranet site.

Governance Protocol for Conducting Policy Analysis, Research, and Evaluation Activities:
http://10.54.61.64:284/hrsd/spp/about_us/dd/governance_protocol.shtml

Guidelines for Conducting Surveys:
http://10.54.61.64:284/hrsd/spp/about_us/dd/survey_guidelines.shtml

4.5 Use of information for research purposes

DHRSD Act - 39(2) / DSD Act - 33(2)

Unless authorized by the Minister, a public officer must not use information for the purposes of policy analysis, research or evaluation if the information could lead to the identification of an individual.

Please note that only designated public officers may authorize the use of information for research purposes. Refer to the Delegation of Authority Instrument. (to be linked)

4.6 Restriction on subsequent use of research information

DHRSD Act - 39(3) / DSD Act - 33(3)

Information which is used for policy analysis, research, or evaluation, cannot subsequently be used in any decision-making process regarding a specific individual.

5. Production of documents for legal proceedings

5.1 Evidence and production of documents

DHRSD Act - 40 / DSD Act - 34

The Minister, members of the Insurance Commission and public officers shall not be required to provide information that is privileged in the course of legal proceedings unless the Minister deems it advisable. In other words, release of information in relation to a subpoena or court order is discretionary and is delegated to specific individuals within the department.

6. Obtaining information

6.1 Agreements authorizing the obtaining of information

DHRSD Act - 41 / DSD Act - 35

The Minister may enter into agreements to obtain information for the administration or enforcement of HRSDC programs with federal institutions, governments of provinces or public bodies created under provincial law, governments of foreign states, international organizations of states or international organizations established by the governments of states, any institution of any such government or organization, and other persons or bodies.

Agreements must be reviewed by the HRSDC ATIP Directorate and Legal Services to ensure that appropriate privacy clauses are included.

Some standard tools that programs may use to draft agreements are available on the HRSDC intranet site. For additional information, please contact the HRSDC ATIP Directorate.

7. Offence

7.1 Unauthorized disclosure of information: Offence and Punishment

DHRSD Act - 42(1)(2)(3) / DSD Act - 36(1)(2)(3)

It is an offence to knowingly make available information that is privileged pursuant to Part 4 of the DHRSD Act and Part 2 of the DSD Act otherwise than in accordance with these Parts. It is also an offence to knowingly use or allow such information to be used, other than in accordance with these Parts or a condition or agreement referred to in:

subsections 33(2) of the DHRSD Act or 27(2) of the DSD Act (availability of information to representatives and MPs);
sections 35 of the DHRSD Act or 29 of the DSD Act (availability of information to the programs of the former Human Resources and Skills Development Canada and Social Development Canada, and other prescribed federal departments);
sections 36 of the DHRSD Act and 30 of the DSD Act (availability of information to provinces, territories or foreign governments); and,
sections 38 of the DHRSD Act or 32 of the DSD Act (research or statistical purposes).

Please note that this offence provision applies to anyone who has access to HRSDC information and has knowingly and inappropriately used or disclosed that information (e.g., departmental officials, provincial employees, contractors, and contribution recipients etc.).

Note that anyone can complain with respect to a breach of this provision, including employees, the public, and clients.

An individual who is guilty of an offence is liable on summary conviction to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

A body or a person, other than an individual, who is guilty of an offence is liable on summary conviction to a fine of not more than \$100,000.

5 KEY HRSDC REFERENCE DOCUMENTS

Governance Protocol for Conducting Policy Analysis, Research, and Evaluation Activities

Guidelines for Conducting Surveys

Policy and Guidelines for the Implementation and Monitoring of Audit Trails within HRSDC

Privacy Clauses for Use in Contribution Agreements

Privacy Clauses for Use in Contracts

Appendix A

Consistent Use

Treasury Board's *Policy on Privacy and Data Protection* provides guidance on how to determine whether a proposed use or disclosure of personal information is closely related to the original purpose for which the information was obtained or compiled by a government department.

Definition of a Consistent Use:

"For a use or disclosure to be consistent, it must have a reasonable and direct connection to the original purpose(s) for which the information was obtained or compiled. A test of whether a proposed use or disclosure is "consistent" may be whether it would be reasonable for the individual who provided the information to expect that it would be used in the proposed manner. This means that the original purpose and the proposed purpose are so closely related that the individual would expect that the information would be used for the consistent purpose, even if the use is not spelled out."-Policy on Privacy and Data Protection, TBS Chapter 2-4.

Approval Process:

Consistent uses must be approved by the Program Executive Heads and the Access to Information and Privacy (ATIP) Coordinator for HRSDC.

Once the consistent use is identified, the federal Privacy Commissioner must be informed of the use for which the information will be used or disclosed; the new use must also be added to the description of the uses of the information found in the relevant Personal Information Bank (PIB) in *Info Source*. Please refer to Appendix E for more information on *Info Source*.


Responsibilities: Programs must advise the ATIP Directorate of HRSDC of any new consistent use; the ATIP Directorate will notify the Privacy Commissioner and ensure that the new uses are described in the relevant PIB.

Please note the New Restrictions on Consistent Use

Pursuant to section 7 of the *PA*, a consistent use may be used to make personal information available within HRSDC for a purpose consistent with the original one.

As an example of consistent use, information described in the PIB entitled "Canada Labour Code Part II – Occupational Health and Safety (LAB)," may be used within HRSDC "to determine if a violation exists under the Canada Labour Code, if the violation can be resolved between the parties, or if legal action is necessary. The information is used for statistical, planning and audit purposes. It may be used to provide information collected to a third party for the purpose of policy analysis, research and evaluation. It may also be provided to a third party for translation and transcribing purposes. The information may also be disclosed for the administration of a program or an activity of HRSDC".

It should be stressed that making information available within the Department as a consistent use is subject to the restrictions found in Part 4 of the DHRSD Act, Part 2 of



the DSD Act, subsection 139(5) of the EI Act, section 104 et al. of the CPP and section 33 et al. of the OAS Act, as applicable.

It should also be reiterated that the laws cited above govern the making available of information not only within HRSDC (including Service Canada), but externally. In this regard, none of these laws permits the disclosure of information to a third party as a consistent use.

Appendix B

Appointment of a Representative

Pursuant to section 10 of the *Privacy Regulations*, individuals may appoint a representative to act on their behalf for purposes of the *Privacy Act*. For example, a lawyer may act on behalf of an individual when provided with consent from the individual. It should be noted that the appointment of representatives for purposes of other legislation is governed by the act in question, for example, the *Canada Pension Plan* or by common/civil law. The consent document should contain:

the name and address of the individual appointing a representative; the name and address of the individual who is being appointed as the representative; what rights will be exercised; the length of time the appointment will remain in effect; the signature of the individual appointing the representative; the date of the signature, and the name and signature of one witness

Verifying the representative's identity:

Finally, before releasing any information to the individual's representative, staff should take reasonable steps to ensure that the representative has adequately identified himself or herself.

Examples of consent forms and an Appointment of Representative form are available via the Electronic Forms Directory:

- ADM3124B (2001-04) Individual's Consent to Disclosure and/or Use of Personal Information
- ADM5047B (2000-01) Consent - Digital Photo
- ADM3106B (2001-04) Appointment of Representative (*Privacy Act*)

Appendix C

Privacy Impact Assessment

The Privacy Impact Assessment (PIA) policy, issued by the Treasury Board Secretariat (TBS), provides a framework to ensure that privacy is considered throughout the design or re-design of programs or services. It should be noted that the assessment process is not intended for the development of new legislation.

Assessments will identify the extent to which proposals comply with all appropriate statutes. The policy requires government departments to conduct Privacy Impact Assessments if new programs and services collect personal information or if the existing programs and services are substantially redesigned or if the delivery mechanisms are changed in a manner that affects the collection, use or disclosure of personal information.

A PIA should be undertaken if the project involves: a new or increased collection, use or disclosure of personal information, with or without the consent of individuals; a broadening of target populations; a shift from direct to indirect collection of personal information; an expansion of personal information collection for purposes of program integration, program administration or program eligibility; new data matching or increased sharing of personal information between programs or across institutions, jurisdictions or sectors; development of a new or extended use of common personal identifiers; significant changes to the business processes or systems that affect the physical or logical separation of personal information or the security mechanisms used to manage and control access to personal information; or the contracting out or devolution of a program or service to another level of government or the private sector

Once completed, PIAs are presented by the program to the Privacy Management Framework Steering Committee (PMFSC).

The PMFSC co-chaired by HRSDC and Service Canada, is responsible for directing the implementation of the Privacy Management Framework (PMF) throughout the Department, and overseeing the response to corporate privacy policy issues. It is an overarching infrastructure which ensures that personal information is managed in accordance with the Department's privacy principles, current laws and the expectations of the public

The PIA Policy sets out the roles and responsibilities of officials and stakeholders: project and program managers, ATIP, Legal Services, and Systems (where applicable) must be involved in the conduct of the assessment; the PIA must be approved by the Deputy Minister; the PIA will be provided to the Office of the Privacy Commissioner of Canada. The HRSDC intranet provides links to PIA guidelines and tools created by the Treasury Board Secretariat that will assist staff in determining whether a PIA is required and on how to conduct one.

Appendix D

Formal and Informal Requests for Personal Information

1. Formal Request for Personal Information

A formal request for personal information is either a request received in writing that refers to the *Privacy Act* or a request submitted on the official Treasury Board Secretariat (TBS) form, entitled: *Personal Information Request Form*.

The official form includes a statement informing the individual of his or her right to complain to the Privacy Commissioner. There are a number of matters which may be the subject of a complaint to the Privacy Commissioner, including:

- a) Denial of a request for access;
- b) Inappropriate collection, retention and disposal or use or disclosure of personal information, and so on.

2. Informal Request for Personal Information

An informal request is one received by a departmental official verbally or in writing but with no reference to the *Privacy Act*. An example of informal disclosure includes personal information on a client's Canada Education Savings Program file, or in the case of an employee, his or her personal information contained in any file kept by Human Resources.

Informal disclosure of personal information found in the client's file should be documented, including when the disclosure took place and what information was provided.

When a person requests personal information that may qualify for an exemption or exclusion under the *Privacy Act*, the requester must be advised to submit a formal request, preferably by completing the *Request for Personal Information* form. For information on exemptions and exclusions, please refer to chapters 2.08 (Excluded information) and 2.09 (Exemptions) of the Treasury Board Secretariat manual entitled *Privacy and Data Protection*.

Only certain individuals within HRSDC have delegated authority to deny access to personal information in response to a formal request. For more information please consult the following delegation instrument or contact the HRSDC ATIP Coordinator.

Privacy Act Delegation for HRSDC (pdf format)

Appendix E

Process for Creating or Amending a Personal Information Bank

In accordance with the *Access to Information Act* and the *Privacy Act*, Treasury Board Secretariat (TBS) is responsible for the annual creation and dissemination of a publication that provides a description of government organizations, program responsibilities, and information holdings, including personal information. TBS fulfils these requirements through the annual publication of **Info Source**. This publication, which is a series of four reference tools, also provides contact information and instructions to assist the public in exercising their rights under the *Access to Information Act* and the *Privacy Act*.

Each year, all federal government departments and agencies subject to the *Privacy Act* are required to provide TBS with descriptions of their personal information holdings; TBS uses this information to update Info Source. Any new collection and use of personal information in a program or project that is developed during the course of the year must be reflected in Info Source and be registered in a Personal Information Bank. The requirement to include a new collection or use of personal information might also be identified during the conduct of a Privacy Impact Assessment (PIA).

What are Personal Information Banks?

Personal Information Banks (PIBs) provide a summary of the type of information about individuals held by federal departments and agencies. They describe personal information that is organized and retrievable by a person's name or by an identifying number, symbol or other particular assigned only to that person. PIBs must include all personal information that has been used, is being used or is available for use for an administrative purpose. Personal information used for research purposes must also be described.

Process for amending or registering a new PIB in Info Source:

- The program determines that a PIB is required for a new collection of personal information, or that an amendment is required to an existing PIB.
- The program provides the HRSDC ATIP Directorate with a description of the new information to be collected and the use that will be made of it, or the amendment that must be made to the existing PIB.

For new PIBs:

- The program must complete the Personal Information Bank Registration Form that is available on the TBS Internet site

- TBS provides guidance on their Internet site on how to complete the Personal Information Bank Registration Form, describing in detail the requirements with regard to the contents of a PIB (description of personal information; class of individuals; purpose; consistent uses; note on disclosure; retention and disposal standards)
- It is the responsibility of the program to ensure that the PIB is described in both official languages. The ATIP Directorate will assist programs in completing the Personal Information Bank Registration Form, and are responsible for ensuring that the PIB meets the requirements of HRSDC/TBS policies and the *Privacy Act*.
- The ATIP Directorate will assign a number to each new PIB.
- The ATIP Coordinator for HRSDC must approve the completed form(s). Once signed by the ATIP Coordinator, the ATIP Directorate will submit the form(s) to TBS for registration.
- If the new or updated PIB contains a new consistent use, the ATIP Directorate will inform the Office of the Privacy Commissioner.
- Amending or registering new PIBs is an ongoing process. In addition, every year, the HRSDC ATIP Coordinator sends a call letter to all NHQ Program Executive Heads asking them to review their respective information holdings, including PIBs, and to advise the ATIP Directorate of any changes.