



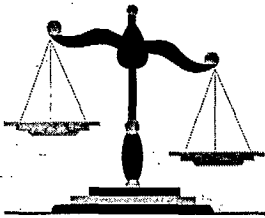
Department of Justice
Canada

GUIDELINES



RELATING TO THE APPLICATION OF THE *PRIVACY ACT*

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GUIDELINES RELATING TO THE APPLICATION OF THE *PRIVACY ACT*

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GUIDELINES RELATING TO THE APPLICATION OF THE PRIVACY ACT

PURPOSE OF THE ACT

The purpose of the Privacy Act is two fold:

- protect the privacy of individuals with respect to personal information held by government institutions;
 - provide individuals with a right of access to information about themselves.
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PROVISIONS OF THE ACT

The Act defines "personal information" as "any information about an identifiable individual that is recorded in any form" (section 3).

In summary, the provisions concerning personal information relate to:

- the collection, retention, disposal, use and disclosure of personal information by government institutions (sections 4 to 8);
- the accounting requirements regarding personal information held by a government institution (sections 9 to 11);
- the right given to Canadian citizens as well as people present in Canada to have access to personal information that is held about them by the federal government and the right to request correction of the personal information where the individual believes there is an error or omission therein (section 12);
- the circumstances where the release of personal information may be refused to the requester (sections 18 to 28);
- the categories of documents which are excluded from the application of the Act (sections 69 and 70);
- the right given to individuals to complain to the Privacy Commissioner on any matter relating to the Act (section 29).

Moreover, the Act provides for the appointment of a Privacy Commissioner and states his powers and duties. Those are stated under government Authority below.

The Act also allows for an individual to apply for a review by the Federal Court of a decision by the Privacy Commissioner following his investigation of a complaint; or for the Privacy Commissioner, with the consent of the individual involved, to apply to the Court for a review of any refusal to disclose personal information requested under the Act.

**GOVERNMENT
AUTHORITY**

Minister of Justice

The Minister of Justice is responsible for monitoring the Act to ensure that it meets government intentions; and for providing legal advice to the government on the Act.

President of the Treasury Board

The President of the Treasury Board is responsible for overseeing the government-wide administration of the Act.

Privacy Commissioner of Canada

The Privacy Commissioner is a fully autonomous ombudsman-like officer appointed by Parliament, who deals with complaints from the public under the Privacy Act.

The Privacy Commissioner has the authority under the Privacy Act to examine the collection, use, disclosure, retention and disposal of personal information by government institutions which are subject to the Act. He is empowered by section 37 of the Act to initiate, at any time, an investigation to determine if government institutions are complying with that legislation.

**DEPARTMENTAL
AUTHORITY**

The Departmental Coordinator has been given delegated authority by the Minister to exercise all powers, duties and functions conferred upon the head of the institution under the Privacy Act, insofar as they may be exercised in relation to the Department of Justice. The Coordinator is therefore the only person authorized to release information, on behalf of the Minister, under the Act.

**ATIP OFFICE
RESPONSIBILITIES**

The ATIP Office has a dual function of serving both the public and the Department. Its main duties are as follows:

to process, on behalf of the Minister of Justice, requests submitted pursuant to the Privacy Act, in accordance with the Act, its regulations and Treasury Board Guidelines;

- to process complaints submitted to the Privacy Commissioner regarding the processing of requests; and to coordinate the resolution of any complaints against the Department made to the Privacy Commissioner pursuant to the Privacy Act;
 - to work with counsel in processing applications for review before the Federal Court;
 - to provide the Department of Justice with legal advice regarding the interpretation and application of the Act;
 - to respond to consultation requests submitted by other federal institutions on Justice documents located in their files while processing their requests;
 - to prepare annual reports to Parliament and other statutory reports;
 - to coordinate the preparation of the Department of Justice's Chapter of the Info Source publication;
 - to implement with the Department the Government Policy on Information Collection and Public Opinion Research, as set out in Treasury Board Circular No.1986-19 as amended. This may include the creation and registration of new Personal Information Banks;
 - to develop policies, procedures and guidelines for the orderly implementation of the Act by the Department;
 - to promote awareness of the Act to ensure departmental responsiveness to the obligations imposed on government;
- to assist in specific projects, such as the SIN replacement project for government employees identification.

**DEPARTMENTAL
RESPONSIBILITIES**

Heads of sectors/directorates/sections within the Department, who are initiating information collection or dealing with personal information must ensure that all Privacy Act requirements are met. This includes information concerning the general public, as well as departmental employees.

**COLLECTION OF
PERSONAL
INFORMATION**

Personal information as defined in the Act can be recorded in any form (including handwritten notes, voice recording and computerized data); and is not restricted to that on paper files. It must be collected in accordance with sections 4 and 5 of the Act, that is:

- personal information must be collected only when it relates directly to an appropriately authorized program or activity of the Department;
- the personal information which is collected must be restricted to the minimum needed for the program/activity in question;
- whenever possible, personal information to be used for an administrative purpose should be collected directly from the individual to whom it pertains, except in the following circumstances:
 - the individual has authorized indirect collection;
 - direct collection would defeat the purpose or prejudice the use for which information is collected;
 - direct collection might result in the collection of inaccurate or misleading information;
 - the information may be obtained from other institutions under subsection 8(2) of the Act (e.g. for litigation purposes);
- throughout its life cycle, that is, from the time it is originally collected or compiled to the time of its disposal, personal information should be as current, accurate and complete as possible for its intended use;
- individuals must be informed of:
 - the purpose(s) for which the information is collected;
 - whether the personal information is required by law or is voluntary;
 - their right of access to and the protection of the personal information collected;
- an individual being asked to give information about another individual must be informed of the purpose of the collection.

Forms Development

Forms used or designed by the Department, or by the agents of the Department, to collect personal information must comply with the Privacy Act. Responsible officers should normally channel through the Access to Information and Privacy Office (ATIP) new forms or amendments to existing forms, before submission to Administrative Services for printing.

Procurement

Terms and conditions of contracts with firms, including legal agents, that will undertake personal information collections on behalf of the Department should stipulate the requirements of the *Privacy Act* with respect to personal information collection and protection and should specify who has control of the collected information. Model of Privacy clause follows:

"Any personal information within the meaning of the *Privacy Act* that is collected, processed or otherwise dealt with for the purposes of this contract and that is under the control of a government institution shall be dealt with in accordance with the Act and the Regulations thereunder and the *Records Scheduling and Disposal Plan*. Any material used to collect such personal information should bear a clause reading as follows:

PROTECTED when completed. All personal information that you provide is protected under the *Privacy Act* and stored in the appropriate Personal Information Bank(s)."

Use of Social Insurance Number (S.I.N.)

Collection and use of the Social Insurance Number (S.I.N.) must be limited to the purposes permitted by specific acts, regulations and authorized programs. (Permitted situations are set out in Appendix 1).

If there is a requirement to collect the S.I.N., individuals should be informed of the purpose(s) for collecting the S.I.N., the authority under which the S.I.N. is being collected, whether any right, benefit or privilege can be withheld or penalty imposed if the S.I.N. is not collected.

Data Matching

Personal information may be generated through data matching, (this involves comparing for administrative purposes personal information from various sources), linkage within the Department or from federal, provincial or international institutions. This may be authorized by law or regulations; if it is not, it must be approved by the Head of the Department or his/her delegated authority.

Government institutions are required to give 60 days advance notice of new matching programs to the Privacy Commissioner. This is done through the ATIP Departmental Coordinator.

Litigation

The collection of personal information from within the Department, another federal institution or other sources, without the consent of the individual concerned, for use in legal proceedings involving the Crown in right of Canada or the Government of Canada is authorized by paragraph 8(2)(d) of the Privacy Act.

COORDINATION OF INFORMATION COLLECTION ACTIVITIES OF THE FEDERAL GOVERNMENT

It is the policy of the Government of Canada to coordinate its information collection activities, which include the collection of personal or non-personal information. (T.B. Circular 1986-19 as amended).

The Departmental Coordinator, Access to Information and Privacy, has been designated as the official responsible for implementing the policy within the Department of Justice.

Program officers initiating information collections should channel their requests for the review, approval and registration through the Access to Information and Privacy Office (ATIP).

PROTECTION OF PERSONAL INFORMATION

All personal information is "protected information". The Security Policy of the Government of Canada governs the designation, identification, storage, processing and transmission of personal information, which is reflected in the departmental Security Manual.

The policy applies to "protected information" recorded in any form, including computerized information.

The policy must also be applied to information retained in a manner other than the original form (e.g. paper copies or electronically transferred information).

NOTE: The Director of Security is responsible for carrying out the requirements of the Security Policy within the Department; and the Electronic Data Processing (EDP) Security Coordinator provides guidance and advice on the implementation of EDP and Communications Security.

USE AND DISCLOSURE OF PERSONAL INFORMATION

The Privacy Act does not take precedence over specific statutory prohibitions regulating the use and disclosure of personal information (e.g. section 241 of the Income Tax Act), but applies where no other statutory provision exists. Under the Act, use and disclosure of personal information must be limited to:

- the purpose for which the information was obtained or compiled;
- a purpose consistent with the original purpose (i.e. for a purpose directly related to the purpose for which the information was obtained or compiled);
- third parties as permitted under subsection 8(2) of the Privacy Act:
 - (a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;
 - (b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;
 - (c) for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information;
 - (d) to the Attorney General of Canada for use in legal proceedings involving the Crown in right of Canada or the Government of Canada (see Litigation on page 6);
 - (e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed;
 - (f) under an agreement or arrangement between the Government of Canada or an institution thereof and the government of a province, the government of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of any such government or organization, for the purpose of administering or enforcing any law or carrying out a lawful investigation;
 - (g) to a member of Parliament for the purpose of assisting the individual to whom the information relates in resolving a problem;
 - (h) to officers or employees of the institution for internal audit purposes, or to the office of the Comptroller General or any other person or body specified in the regulations for audit purposes;
 - (i) to the National Archives of Canada for archival purposes;

(j) to any person or body for research or statistical purposes if the head of the government institution

(i) is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and

(ii) obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;

(k) to any association of aboriginal people, Indian band, government institution or part thereof, or to any person acting on behalf of such association, band, institution or part thereof, for the purpose of researching or validating the claims, disputes or grievances of any of the aboriginal peoples of Canada;

(l) to any government institution for the purpose of locating an individual in order to collect a debt owing to Her Majesty in right of Canada by that individual or make a payment owing to that individual by Her Majesty in right of Canada; and

(m) for any purpose where, in the opinion of the head of the institution,

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or

(ii) disclosure would clearly benefit the individual to whom the information relates.

In case of doubt concerning the application of subsection 8(2), consultation with the Departmental Coordinator is recommended.

NOTE:

- 1) The federal investigative bodies mentioned in paragraph 8(2)(e) are listed in Appendix 2. The response to such requests must be provided by the Departmental Coordinator.
- 2) Personal information considered for disclosure under paragraph 8(2)(m) must be reviewed by the Departmental Coordinator who will also notify the Privacy Commissioner of such disclosure, as required by subsection 8(5) of the Act.

IN-HOUSE RESEARCHERS

If the personal information is originally collected in order to research or compile statistics, then one should ensure that the collection (sections 4 and 5) and the use (section 7) provisions of the Privacy Act are followed.

Where the information was collected for some other purpose, in-house researchers should comply with the disclosure provisions of the Act.

When they are using personal information a) in a manner different from the purpose for which it was compiled or b) in a manner that is not consistent with the purpose for which it was compiled (section 7), or for a reason for which none of the other disclosure provisions in subsection 8(2) apply, they should comply with paragraph 8(2)(j) stated above;

In-house researchers, who must use files containing personal information as part of their regular duties with the Department, likely meet the requirements of section 8(2)(j) of the Privacy Act.

PRECEDENTIAL FILES AND DOCUMENTS USED AS MODELS BY JUSTICE COUNSEL

In the case of documents or files containing personal information used as models by justice counsel to do their current work or files kept as precedents, the main concern is to ensure compliance with the use (section 7) and disclosure (section 8) provisions of the Privacy Act.

One issue to consider is whether the personal information is being used in the precedential files, or files kept as models. It could be argued that if the personal information is not being used, section 7 of the Privacy Act would not apply.

If the personal information is publicly available, sections 7 and 8 of the Privacy Act do not apply. (See section 69(2) of the Act). For example, a reference to the "Morgentaler case" would not contravene the Act.

In other situations, the issue that must be considered is whether the personal information is being used for the purpose for which it was obtained or a consistent use thereof (section 7). For example, a counsel may be advising whether the Department should pursue a judgment against a debtor who has recently lost his job. The personal information would be crucial to the giving of advice. In this example, the personal information is being used in a manner consistent with the purpose for which it was collected and therefore meets the statutory requirements of section 7 of the Privacy Act.

The likelihood that personal information is actually being used in contravention of the Privacy Act by the Department seems remote, as there may be either no use of the information, or the use may be consistent with the original purpose for which it was collected, or the information may be publicly available.

However, there is a risk that the longer this personal information is retained, the greater the likelihood of inadvertent contravention of the Privacy Act. It is, therefore, advisable that the established Records Retention and Disposal Schedules be followed.

**RETENTION AND
DISPOSAL OF
PERSONAL
INFORMATION**

The Records Retention and Disposal Schedules approved by the National Archivist of Canada apply to records kept in any form, with the following conditions:

- where personal information has been used to make a decision directly affecting an individual, the information shall be retained for at least two years after the last time the information was so used, unless the individual consents to its earlier disposal; and
- where a request for access to personal information has been received, the information shall be retained until such time as the individual has had an opportunity to exercise all his or her rights under the Act.

Where a request is received under paragraph 8(2)(e) of the Privacy Act, a copy of every request received and a record of any information disclosed pursuant to such request shall be retained for a period of at least two years following the date on which a request is received, and shall, on request, be made available to the Privacy Commissioner. (Subsection 8(4) of the Act).

NOTE: The Manager of the Records Management Section is responsible for the Records Retention and Disposal Schedules.

**RIGHT OF ACCESS
TO PERSONAL
INFORMATION**

Personal information requested by an individual to whom it relates, including a departmental employee, should normally be provided informally without recourse to the formal procedures of the Privacy Act.

However, when there is some question of the personal information being exempt from release, the requestor should be informed of his or her right to make a request under the Privacy Act, through the Access to Information and Privacy Office.

Any request made pursuant to the Privacy Act that is received in the Department should, without delay, be forwarded to the ATIP Office.

In processing a request made under the Privacy Act, all relevant documents will be sent to the ATIP Office, on request, and the Departmental Coordinator will determine which, if any, exemptions apply. (As noted previously, the Departmental Coordinator is the only person authorized to make that determination).

CORRECTION NOTATION AND NOTIFICATION

Any individual who was given access to personal information is entitled to ask that personal information pertaining to them be corrected, when they believe there is an error or omission in the personal information. Request for correction should be addressed to the Departmental Coordinator.

Personal information will only be corrected when a correction is requested to factual information which has been incorrectly recorded in the individual's file and where it is physically possible to correct the record. Where a requested correction is not made, a notation will be made to the file indicating the request.

Where the request is for the correction of opinion-type, subjective information, it will be corrected if the individual was the source of the information. If such information was obtained from another source, a notation will be made to the file indicating the requestor's views on the matter.

Any person, body or government institution to whom the personal information has been disclosed within the two years immediately preceding the date that the request for correction is received, must be notified of the correction made or that the correction was refused and notation of the request was made.

RIGHT OF COMPLAINT

Individuals, including employees, must be made aware of their right to complain to the Privacy Commissioner when satisfaction was not obtained on any matter covered by the Privacy Act, be it mismanagement of personal information, unauthorized use or disclosure, refusal to give access to individuals to their personal information, refusal to make requested corrections, etc.

The Privacy Commissioner is empowered to investigate any matter relating to the Act.

When a complaint is lodged, the ATIP Office is notified by the Privacy Commissioner of the complaint and of its nature. The investigation is conducted by the Commissioner's Office with ATIP staff who will involve responsible officers where appropriate.

PUBLICATION OF PERSONAL INFORMATION HOLDINGS

All personal information holdings and uses of the information must be described in Infosource, (a government publication made available to the public), published by the Treasury Board Secretariat. As a matter of policy, each government institution must include, in the descriptions of its Personal Information Banks, details of all the uses or disclosures for which consent is sought at the time of collection of personal information and all the consistent uses for which information is used or disclosed. In addition, any use of the SIN and any approved data matching activities

must be included, as well as the approved period of retention and disposal of the personal information.

There must be no classes of information and no personal information banks whose existence is not described in the publication intended for the general public and government employees.

This information is provided by the sectors/directorates/ sections to the ATIP Office who is responsible for coordinating and preparing the Department's chapter to the publication.

PROCEDURES

Sectors/directorates/sections must have in place procedures:

- to govern the collection of personal information;
- to up-date personal information to ensure that it is current and accurate for its intended use;
- to obtain consent from an individual to the use or disclosure of personal information for purposes beyond those permitted under sections 7 and 8 of the Privacy Act, which may be sought either at the time of collection of the information or subsequently, when a specific need arises.

Consent at time of collection:

Documents used to collect personal information which will be used or disclosed for purposes other than those permitted under sections 7 and 8, must include:

- (a) a description of the specific type(s) of information involved;
- (b) a description of the nature of the use or disclosure for which consent is sought;
- (c) a statement that refusal to consent to such use or disclosure will not prejudice the individual in any way or result in any adverse consequences for the individual in connection with the particular primary administrative purpose(s) being served by the collection; and
- (d) a consent/refusal statement with space for the signature of the individual or authorized representative and the date.

Consent subsequent to collection:

A government institution shall consider consent to be given only:

(a) on receipt of a signed consent form indicating the agreement of the individual or his or her authorized representative to the use or disclosure; or

(b) on receipt of a written authorization from the individual or his or her representative authorizing that the information be used or disclosed in a specific manner.

Consent on behalf of another individual may be given by any person authorized in writing by the individual to whom the information pertains. In the case of a minor, consent must be obtained from a parent or guardian. In the case of an incompetent or a person dead less than 20 years, consent may be given by a person authorized by or pursuant to the law of Canada or a province to manage the affairs of that person.

- to deal with correction requests, notation and notification of any person, body or government institution to whom the personal information has been disclosed within the two years immediately preceding the date that the request for correction is received, of the correction made; and notification of the individual concerned that the correction or annotation has been made or denied and that a receiving body or person has been notified accordingly.
- to record disclosures made pursuant to subsection 8(2) of the Act, particularly:
 - to account for requests and disclosures made under paragraph 8(2)(e) of the Act. All requests for disclosure to federal investigative bodies and all records of disclosure made in consequence of such requests must be kept for a minimum of two years. Such records must be kept in a unique personal information bank set up for that purpose (subsection 8(4) of the Act);
 - to account for agreements signed between the Government of Canada or a federal government institution and the governments of provinces, foreign states or international organizations required for disclosure of personal information under paragraph 8(2)(f) of the Act;
 - to record and retain any written undertaking that no subsequent disclosure will be made of the personal information disclosed under paragraph 8(2)(j) of the Act;
 - to notify the Privacy Commissioner in writing of any disclosure of personal information under paragraph 8(2)(m) prior to the disclosure where reasonably practicable or in any other case forthwith on the disclosure. This should be done through the Departmental Coordinator (subsection 8(5) of the Act);

- to record any use of personal information for a purpose not included in the statements of uses and purposes described in the relevant personal information bank in "Infosource". Such record must be attached to the personal information and is deemed to form part of the personal information to which it is attached. This record keeping requirement does not apply to information disclosed pursuant to paragraph 8(2)(e).
- to notify the ATIP office of all personal information holdings and uses to ensure it is described in "Infosource".

NOTE:

The Guidelines address the main issues which the Act raises, but should not be considered comprehensive. It is an administrative interpretation which should not be substituted for the Act, Regulations and amendments thereto.

For further information concerning the Act and its applications, please contact the Access to Information and Privacy Office at 952-8361 or e-mail the Coordinator.

AUTHORIZED USES OF THE SOCIAL INSURANCE NUMBER

STATUTES AND REGULATIONS

Canada Elections Act
Canada Labour Standards Regulations
 (Canada Labour Code)
Canada Pension Plan Regulations
 (Canada Pension Plan)
Canada Student Loans Regulations
 (Canada Student Loans Act)
Canadian Wheat Board Act
Family Allowances Regulations
 (Family Allowances Act, 1973)
Family Orders and Agreements Enforcement Assistance Act and Regulations
Farm Income Protection Act
Gasoline and Aviation Gasoline Excise Tax Application Regulations
 (Excise Tax Act)
Goods and Services Tax Act and Regulations
Income Tax Act
Labour Adjustment Benefits Act
Old Age Security Regulations
 (Old Age Security Act)
Race Track Supervision Regulations
 (Criminal Code)
Tax Rebate Discounting Regulations
 (Tax Rebate Discounting Act)
Unemployment Insurance Act, 1971 and Regulations
Veterans Allowance Regulations
 (War Veterans Allowance Act)

PROGRAMS AUTHORIZED TO USE THE SIN

Income and Health Care Programs
 (Veterans Affairs)
Immigration Adjustment Assistance Program
 (Employment and Immigration)
Labour Adjustment Review Board
 (Labour)
National Dose Registry for Occupational Exposures to Radiation
 (National Health and Welfare)
Rural and Native Housing Program
 (Canada Mortgage and Housing Corporation)
Social Assistance and Economic Development Program
 (Indian Affairs and Northern Development)
Tax Case Appeals
 (National Revenue – Taxation)

SCHEDULE II OF THE REGULATIONS (S. 5)

INVESTIGATIVE BODIES

1. Audit Directorate, Department of National Revenue (Taxation)
- 1.1 Audit Division, Department of National Revenue (Customs and Excise)
2. Board of Inquiry, Department of National Defence
3. Bureau of Dangerous Drugs, Department of National Health and Welfare
4. [Revoked, SOR/85-965, s. 1]
5. Canada Ports Corporation Police and Security, Department of Transport
6. Canadian Forces Military Police
- 6.1 Canadian Security Intelligence Service
- 6.2 Canadian Transportation Accident Investigation and Safety Board
7. Citizenship Registration Branch, Department of the Secretary of State
8. Clemency Division, National Parole Board
- 8.1 Collections Sections of the Compliance Division, Department of National Revenue (Customs and Excise)
9. Commission of Inquiry on War Criminals
- 9.1 Commission of Inquiry into the Air Ontario crash at Dryden, Ontario
- 9.2 Control Branch (Insurance), Canada Employment and Immigration Commission
10. Intelligence Division, Department of National Revenue (Customs and Excise)
- 10.1 [Revoked, SOR/92-501, s. 4]
- 10.2 Office of the Inspector General of the Canadian Security Intelligence Service
- 10.3 Park Wardens, Canadian Parks Service, Department of the Environment
11. Personnel Security Service, Department of External Affairs
12. Preventive Security Division, Securities Branch, Canadian Penitentiary Service
13. Royal Canadian Mounted Police

13.1 Security Intelligence Review Committee

14. Security and Investigative Services, Canada Post Corporation

15. Security Section of the Passport Office, Department of External Affairs

15.1 Special Investigations Division, Department of National Revenue (Customs and Excise)

16. Special Investigations Unit, Department of National Defence

17. Verifications and Collections Directorate, Department of National Revenue (Taxation)

SOR/84-46, ss. 1, 2; SOR/84-571, s. 1; SOR/85-345, s. 1; SOR/85-965, s. 1; SOR/86-138, s. 1; SOR/89-284, s.1; SOR/92-501, ss. 1 to 6; SOR/94-285, s.1