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IPC Practices

PUTTING ONTARIO'S INFORMATION AND PRIVACY LEGISLATION TO WORK
INFORMATION AND PRIVACY COMMISSIONER/ONTARIO
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How to Protect Personal Information in the Custody of a Third Party

It is the responsibility of Ontario's provincial and municipal government institutions to protect the personal information in their custody or control. This means that an institution must always regulate the handling of its personal information, even where a third party outside the institution may have custody of the personal information.

Why is this important?

Both the *Freedom of Information and Protection of Privacy Act* (the provincial Act) and the *Municipal Freedom of Information and Protection of Privacy Act* (the municipal Act) require institutions to protect personal information in their custody or control. Without appropriate precautions, breaches in personal privacy can occur and complaints against an institution can be made. This is particularly significant when government institutions enter into agreements with third parties who will have access to personal information.

What is a "third party?"

A third party can be any outside individual (such as a consultant), a business or an organization that provides a service to, or acts of behalf of, an institution.

Why would an institution give a third party access to personal information?

An institution may need to retain a third party to provide a service. Sometimes this service requires the third party to collect personal information on behalf of the institution, or to have access to personal information collected by the institution. Here are a few examples:

- translators required to translate correspondence;
- verbatim reporters required to record proceedings; or
- a service bureau required to handle computer processing.

Where personal information leaves the institution's premises, the institution must ensure that appropriate precautions are taken to protect the personal information in the possession of the third party.

What precautions can be taken to protect personal information in the hands of a third party?

Institutions are strongly advised to consider the following two recommendations:



- enter into a written agreement with the third party supplying the service;
- develop internal policies and procedures for drafting agreements to ensure privacy considerations are included.

What privacy considerations should be included in a written agreement?

Depending on the nature of the work, agreements should include clauses which cover: collection, retention, use, disclosure, disposal, and security of personal information.

Specifically, the written agreement should include:

Collection

Where a third party is collecting personal information on behalf of the institution, they must comply with the provisions regarding the authority to collect, the manner of collection and notice of collection.

The requirements are in sections 38, 39(1) and 39(2) of the provincial *Act* and sections 28, 29(1) and 29(2) of the municipal *Act*.

Retention

The third party must adhere to the minimum retention periods for personal information in accordance with section 5 of R.R.O. 1990, Reg. 460 under the provincial *Act* and section 5 of R.R.O. 1990, Reg. 823 under the municipal *Act*.

Use and Disclosure

Regardless of how the third party receives the personal information, the third party must use it in accordance with Ontario's access and privacy legislation. Specifically, sections 41 and 42 of the provincial *Act* and sections 31 and 32 of the municipal *Act* outline the requirements for use and disclosure of personal information.

Disposal

A clause should be included in the agreement to outline approved procedures and methods to

dispose of personal information in the custody of the third party.

This should be done in accordance with R.R.O. 1990, Reg. 459 under the provincial *Act*. This regulation requires provincial institutions to ensure personal information is disposed in such a way that it cannot be reconstructed or retrieved. There is no equivalent regulation under the municipal *Act*. However, municipal institutions are urged to consider the provisions of R.R.O. 1990, Reg. 459 when drafting a clause dealing with the disposal of personal information in the custody of a third party.

Personal information saved on electronic recording media such as audio/video tapes, computer tapes, disks, and cassettes is of special concern. Where appropriate, the agreement should state that the third party cannot re-use the recording media on which the personal information is stored unless the information recorded on it is destroyed in such a way that it cannot be re-created.

Security

Third parties must implement the necessary precautions to ensure that personal information can be reproduced if the original information is accidentally lost or destroyed. (This is for basic security and to ensure the minimum retention period.)

After the personal information has been returned to the government institution, the institution must be assured that the third party cannot reproduce it.

Security procedures must meet the requirements outlined in section 4 of R.R.O. 1990, Reg. 460 under the provincial *Act* and section 3 of R.R.O. 1990, Reg. 823 under the municipal *Act*.

How can an institution make sure that a third party is complying with the legislation?

An institution must be satisfied that the third party is complying with either the provincial or municipal *Act*. To ensure compliance, the institution should consider:



- requiring third parties to advise their staff or sub-contractors of the privacy provisions of the legislation and their obligation to protect personal information.
- requiring all third party staff or sub-contractors who will have access to the personal information to sign an undertaking of confidentiality regarding personal information.

Is there anything else to consider?

Government institutions should consider the impact on privacy of telecommunications and transborder data flow.

For example, if an institution hires a consultant who resides outside the province or country, personal information may be transferred to another jurisdiction. Privacy breaches could occur if this jurisdiction does not have privacy legislation to protect personal information, or if the third party is not sensitive to privacy issues.

How do privacy clauses help protect personal information?

By considering these issues at the drafting stage of an agreement, an institution ensures a third party is aware of the appropriate privacy issues. In this way, the institution may prevent an accidental breach of privacy and a subsequent privacy complaint.

Reminder to provincial and municipal institutions

A provincial institution must ensure the *Directory of Records* is updated if a third party's services result in the creation of a new personal information bank. Similarly, a municipal institution must ensure their own index of personal information banks is kept current.

Other useful references available from the IPC Communications department:

IPC Practices:

Copying Information to Individuals Inside and Outside an Institution (Number 2, Revised September 1998)

Third Party Information at the Request Stage (Number 5, Revised September 1998)

Providing Notice of Collection (Number 8, Revised September 1998)

The Indirect Collection of Personal Information (Number 14, Revised September 1998)

Guidelines on the Use of Verbatim Reporters at Administrative Hearings (April 1991)

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