

***ACCESS AND PRIVACY ISSUES:  
A GUIDE FOR TRIBUNALS***

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## Executive Summary

This Guide has been jointly prepared by the Office of the Information and Privacy Commissioner (OIPC) for British Columbia and the BC Ministry of Attorney General's Administrative Justice Office (AJO) to address tribunal access and privacy issues.

### *Why the Guide*

Access issues engage a fundamental element of our democratic system – openness and transparency of court and administrative proceedings – that has been increasingly met by tribunals posting decisions and other documents on their websites. But privacy concerns have been identified about the potential for data-mining, identity theft, stalking, and other misuses by powerful search tools that can access and extract personal information from those decisions and documents. The Guide discusses how to address these difficult issues in the context of the applicable legislation<sup>1</sup> and how to comply with that legislation when collecting information, providing access to records, and publishing reasons for decisions.

### *How to Balance the Interests to Achieve Compliance and Meet Needs*

A continuum of access and privacy measures can achieve compliance with the legislation, and tribunals may adopt practices from this continuum. The various factors that a tribunal may need to consider when determining the types of access and privacy measures to adopt are set out.

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<sup>1</sup> The [Freedom of Information and Protection of Privacy Act](#), RSBC 1996, c.145, sets a framework for access and to protect privacy; the [Administrative Tribunals Act](#), SBC 2004 c.45 addresses the application of that Act to certain tribunals. Both are discussed in more detail in the Guide.

## Introduction

The purpose of this Guide is to assist administrative tribunals in developing access and privacy policies and procedures:

- that promote openness in their proceedings and decision-making processes while taking into account the privacy interests of the parties involved, including the interests of third parties; and
- that are tailored to and reflect the tribunal's unique jurisdiction and statutory powers and obligations.

It may also be of interest to tribunal users and the public in understanding why tribunals have access and privacy policies and procedures.

This Guide identifies what the principles of openness are, why they exist and how they relate to privacy interests, and the difference between courts and tribunals. The importance of considering privacy interests at all stages of a tribunal's work is discussed, specifically:

- collecting information;
- providing access to records; and
- publishing reasons for decisions.

The factors and criteria that may apply are set out, to assist administrative tribunals in achieving an appropriate balance between the privacy of parties and openness of their proceedings, ideally in advance of a specific issue arising.

The need for this Guide has been prompted by the recent level of discussion about access to tribunal records and privacy rights, and the issues arising from the increasing practice of tribunals to post their decisions and other information on their websites. Making information available on the internet can enhance the openness of tribunal proceedings and decision-making processes as users can retrieve more information about the tribunal and be better prepared to participate

in its processes. Additionally, the public can be better informed about how tribunals operate and why they make the decisions they do. However, new technologies can also allow for potential misuse of some of this information.

Powerful search tools can be used to access information that may be available on the internet about persons who use the tribunal to settle disputes or establish rights. That information sometimes includes personal identifiers.<sup>2</sup> Data-mining,<sup>3</sup> identity theft, stalking, harassment and discrimination are just some examples of the potential for misuse. Individuals who fear their personal information might be accessed from a tribunal's records and possibly misused may conclude that possibility is too high a price to pay, and may decline to use the tribunal to resolve their disputes or establish their rights. This fear might be allayed by tribunals designing and implementing privacy and access policies and protocols.

## Openness and Privacy – A Delicate Balance

The “open court principle” recognizes the rights of members of the public to

- attend court proceedings; and
- have access to records in the court file, including the reasons for decision.

The “open court principle” ensures that the public can know what is happening in the courts, which is an important element of our democratic system. However, individuals who are parties to court proceedings may have a right, or at least an expectation, of privacy about personal information that may be disclosed as part of the court process.

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<sup>2</sup> A personal identifier is personal information that when combined with other information, or with the person's name, enables direct identification of an individual so as to pose a serious threat to the individual's personal security. Personal identifiers include day and month of birth; civic, postal or e-mail address; unique numbers such as phone numbers, SIN numbers, financial account numbers and biometrical information. This information can be used to perpetrate identity theft as institutions may use some of this information for the purpose of authentication.

<sup>3</sup> Data mining is the process of sorting through large amounts of data and picking out relevant information.

In balancing the right to an open court with parties' rights to privacy, the courts have concluded that:

- the right to an open court is an important constitutional rule;
- the right to privacy is a fundamental value; and
- the right to an open court outweighs the right to privacy, except in certain circumstances.<sup>4</sup>

However, because administrative tribunals are not courts, the court's conclusions do not directly apply to tribunals. As such, the public's right to attend a tribunal hearing or to access records in the tribunal's files does not automatically "trump" an individual's right to privacy about personal information held by the tribunal. For this reason, administrative tribunals are obliged to engage in a finer balancing of these competing interests. This balanced consideration should be done in advance, by developing and implementing policies that appropriately address privacy concerns both when conducting hearings and in providing access to tribunal records.

- ***The Freedom of Information and Protection of Privacy Act***

The *Freedom of Information and Protection of Privacy Act* (FIPPA) carefully balances the two purposes: providing access and protecting privacy. It holds public bodies accountable by:

- giving the public a right of access to records;<sup>5</sup>
- giving individuals a right of access to, and a right to request correction of, personal information about themselves; and
- specifying limited exceptions to the rights of access.

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<sup>4</sup> However, the courts are very mindful of the need to protect privacy and have developed a model document to support that. See the Canadian Judicial Council "Model Policy for Access to Court Records in Canada", at:

[www.cjc-ccm.gc.ca/cmslib/general/news\\_pub\\_techissues\\_AccessPolicy\\_2005\\_en.pdf](http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_techissues_AccessPolicy_2005_en.pdf) Also see the Supreme Court of Canada "Policy for Access to Supreme Court of Canada Court Records" (2009) at: [www.scc-csc.gc.ca/court-cour/rec-doc/pol-eng.asp#s1](http://www.scc-csc.gc.ca/court-cour/rec-doc/pol-eng.asp#s1).

<sup>5</sup> A "record" is defined in Schedule 1 of FIPPA as including "books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records".

FIPPA also makes those bodies accountable to protect personal privacy, by preventing the unauthorized collection, use or disclosure of personal information. FIPPA establishes the Office of the Information and Privacy Commissioner (OIPC), which is independent from government. The OIPC monitors compliance with FIPPA.

- ***Tribunals and FIPPA***

Like courts, openness and privacy are important rights in tribunal proceedings. However, while court records are expressly excluded from the scope of FIPPA,<sup>6</sup> tribunal records *are* covered by FIPPA, unless the record is specifically excluded.

Exclusions from FIPPA that may apply include:

- Section 3(1)(b) of FIPPA, which excludes “a personal note, communication or draft decision of a person who is acting in a judicial or quasi judicial capacity”;
- Section 61 of the *Administrative Tribunals Act* (ATA),<sup>7</sup> which applies only if adopted in the tribunal’s own enabling legislation;<sup>8</sup> or
- express provisions in a tribunal’s own enabling legislation.

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<sup>6</sup> See section 3(1)(a) (as noted above, the courts have found that the right to an open court outweighs the right to privacy, except in certain circumstances)

<sup>7</sup> Section 61 (2) The *Freedom of Information and Protection of Privacy Act*, other than section 44 (1) (b), (2), (2.1) and (3), does not apply to any of the following:

- (a) a personal note, communication or draft decision of a decision maker;
- (b) notes or records kept by a person appointed by the tribunal to conduct a dispute resolution process in relation to an application;
- (c) any information received by the tribunal in a hearing or part of a hearing from which the public, a party or an intervener was excluded;
- (d) a transcription or tape recording of a tribunal proceeding;
- (e) a document submitted in a hearing for which public access is provided by the tribunal;
- (f) a decision of the tribunal for which public access is provided by the tribunal.

(3) Subsection (2) does not apply to personal information, as defined in the *Freedom of Information and Protection of Privacy Act* that has been in existence for 100 or more years or to other information that has been in existence for 50 or more years.

<sup>8</sup> To see if section 61 ATA applies to a tribunal, see:

[http://www.gov.bc.ca/ajo/down/application\\_of\\_ata\\_to\\_individual\\_tribunals.pdf](http://www.gov.bc.ca/ajo/down/application_of_ata_to_individual_tribunals.pdf)

As such, while openness is an important principle that applies to tribunals, it does not automatically override privacy rights. While openness should be promoted, it should be done in a way that the tribunal can also fulfil its obligations to protect personal privacy under FIPPA.

Section 61 of the ATA recognizes the importance of maintaining a transparent and accessible administrative justice system, while taking into account the special nature of the quasi-judicial decision-making process and the specific fairness responsibilities that tribunals have.

- ***Complying with FIPPA and the ATA***

A continuum of access and privacy measures can be used to achieve compliance with the spirit and intent of FIPPA and tribunals may adopt privacy practices from this continuum (unless openness, confidentiality and/or access to their records or decisions is specifically addressed and set in their own legislation). The continuum reflects the fact that administrative tribunals are unique and deal with a range of issues and subjects of varying degrees of personal sensitivity.

The extent and degree to which a tribunal adopts access and privacy measures will depend on where the tribunal falls on the “privacy continuum”. To determine that, and the types of access and privacy measures a tribunal may need to adopt as result, the following factors can be of assistance:

- How sensitive is the personal information being considered by the tribunal? For example, does the tribunal deal with personal health, educational, financial or employment information?
- Is there a public interest element to the tribunal’s proceedings, such as enforcement or disciplinary hearings, or do the proceedings only involve a private dispute the outcome of which primarily concerns the parties involved?
- Does the tribunal’s enabling legislation provide that the tribunal:
  - has the power to make rules governing its own procedure;
  - hearings must be open to the public or may be held in private;
  - has authority to exclude the public from its hearings;

- is governed by a confidentiality provision;
  - must make its decisions accessible to the public;
  - may publish its decisions; or
  - has an obligation to remove personal information or personal identifiers from its decisions?
- Does the tribunal’s enabling legislation contain exemptions from any of the provisions of FIPPA?
  - What provisions of the ATA apply to the tribunal’s proceedings?

Once these factors have been considered, the tribunal will want to consider developing privacy and access policies to govern the collection of and access to personal information.

## Collecting Personal Information

From a privacy perspective, administrative tribunals should collect only the personal information that is necessary to carry out their administrative and adjudicative functions. Sometimes a practise or policy, especially if adopted prior to the now widespread use of the internet, may inadvertently require or permit collection of personal information that is unnecessary for the task at hand. To ensure that the tribunal collects only that personal information that is necessary to carry out its functions, tribunals should consider and/or review:

- its standard forms or policies for creating internal “administrative” files; and
- its policies or rules that apply to a party’s own documents that may be submitted to the tribunal.

- ***Standard Forms***

Many tribunals request users complete standard form documents in order for the tribunal to open a file, so the tribunal can manage the file administratively. These forms are typically intended to assist the users to provide the information required and to ensure that the tribunal has the information it needs. However, FIPPA applies to protect personal information contained in these documents, so

tribunals will be under an obligation to limit and protect any personal information it collects.

When designing or reviewing standard forms, tribunals may wish to consider the following:

- Do any standard forms request parties to provide any personal information or personal identifiers that may not be necessary for the tribunal, either to process the matter or to adjudicate on it?
- If personal information or personal identifiers are necessary for either of those purposes, can that information, or some of it, be provided at a later stage in the process? For example, requiring specific details about a claim or dispute may not be necessary at the very initial stage if that information is already in the other party's possession (for example, a government benefits office). Later filing of the information may also permit settlement or other resolution to occur, without the risk or need for any further disclosure of the personal information.
- If the standard forms can be filed with the tribunal electronically, is the tribunal's website sufficiently secure? A variety of security measures are now available and all tribunals should have some form of website security in place. Information and Technology experts located within the Ministry responsible for the tribunal may be able to assist.

- ***Records Obtained at a Hearing***

In many tribunals, parties will want to file or present documents to the tribunal to support their case. Those documents may contain personal information about the party, or even someone else. FIPPA applies to protect any personal information contained in these documents, so tribunals will be under an obligation to protect any personal information those documents may contain.

When designing or reviewing its practices and procedures for hearings, including rules of practice, a tribunal may wish to consider the following:

- Giving the person conducting the hearing the express authority to refuse to accept a document into evidence, if in his or her opinion the document has or will have little or no probative value. The ability to make this kind of ruling can help minimise the risk of accepting, as

part of the tribunal’s case file, documents that might contain sensitive personal information but which have little or no value in assisting the decision-maker to make a finding of fact about an issue in dispute.

- Allowing a party’s request that personal information be deleted or “severed” from documents submitted as evidence, if the personal information does not relate to the matter or dispute.
- Restricting or prohibiting any private recording of tribunal proceedings.<sup>9</sup>
- Clarifying how or when an official transcription or recording of tribunal proceedings may be made.<sup>10</sup>
- If sensitive personal information is to be presented in evidence, providing parties the opportunity to ask the hearing panel to exclude the public from the hearing and/or to keep the information confidential.<sup>11</sup>

In addition, the tribunal may also want to consider adopting a policy asking the parties to expressly commit to only using any personal information received during the course of a proceeding for the purpose of that proceeding and not for any other purpose.

## Providing Access to Documents and Protecting Privacy

Under FIPPA, the right of access applies to *all* records in the custody or under the control of a tribunal, *except* those records explicitly excluded by section 3(1)(b), section 61 of the ATA, or a provision contained in the tribunal’s enabling legislation. However, privacy rights may still apply to personal information that may be contained in many records to which access must be

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<sup>9</sup> Private recording is generally considered to serve little purpose in making a proceeding more transparent. See paragraph 4.4.3 of the Environmental Appeal Board’s Procedural Manual for an example of restricting the private recording of proceedings:

[http://www.eab.gov.bc.ca/fileappeal/EAB\\_Proc\\_Manual\\_2009.pdf](http://www.eab.gov.bc.ca/fileappeal/EAB_Proc_Manual_2009.pdf)

<sup>10</sup> Recordings and transcripts should only be available to parties, and generally only for appeal and judicial review purposes.

<sup>11</sup> The tribunal will have to have authority to do this, and if it may be done, the tribunal should establish internal policies for “sealing” files, so that only authorized persons may access the file documents.

given. This can mean that, where access to a record must be given, a tribunal will be required to sever (delete) personal information from the document before providing access. For this reason, tribunals may find it useful to develop a protocol or “roadmap” so that personal information is properly and consistently protected, whether or not the record is to be accessible. A clear “road map” can be helpful to tribunal staff, the parties and the public, to know what to do and what to expect.

- **Section 61 of the ATA Limits Severance Requirements**

Section 61 of the ATA clarifies that administrative tribunals are not required to sever personal information from transcripts or recordings of public hearings or from documents submitted at public hearings.<sup>12</sup>

Providing access to most tribunal documents is consistent with most tribunals’ statutory requirements or policies that permit the public to attend its hearings. However, requiring tribunals to sever personal information from records that were already public (as the public already had access to the information during the hearing) created very real practical difficulties in many cases. With hearings that are often lengthy and sometimes involve thousands of pages of documents, reviewing them to sever personal information could be extremely time-consuming and costly.

Subsections 61(2)(d) and (e) clarify that the severance requirements in FIPPA do not apply to tape recordings or transcripts of the hearing or to documents submitted during the hearing, where public access to the hearing was provided.

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<sup>12</sup> For more information on this, see the Information Bulletin “Application of the *Freedom of Information and Protection of Privacy Act* to Administrative Tribunals (Section 61 of the *Administrative Tribunals Act*)” at: [http://www.gov.bc.ca/ajo/popt/app\\_of\\_foi\\_admin\\_tribunals.htm](http://www.gov.bc.ca/ajo/popt/app_of_foi_admin_tribunals.htm)

- ***Practical considerations***

When developing policies to guide the tribunal with respect to access and privacy issues, and to promote consistency with respect to these practices, tribunals may wish to:

- clearly articulate which records are excluded from the application of FIPPA access requirements, and if access will be permitted to any of those records or any parts of them even though FIPPA does not require it;
- set out in writing the conditions under which a tribunal will give access to records and the measures a tribunal will take to protect privacy; and
- inform the parties and the public about the tribunal's access and privacy practices.

- ***Notice to Parties***

A tribunal should make parties aware of the purpose their personal information may be required for, by including a general notice in all standard tribunal filing forms.<sup>13</sup> However, even with this kind of notice, many parties will remain completely unaware of the potential that their personal information could ultimately become publicly available as a result of the posting of the tribunal's decision on the tribunal's website. For this reason, it is important tribunals bring to the attention of and clearly communicate to parties the tribunal's policy on what information will be posted on its website and thus accessible through the internet.

A tribunal may wish to:

- publish its access and privacy policy on its website, so parties can know about that policy, in advance of starting any process;

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<sup>13</sup> See FIPPA section 27(2) A public body must ensure that an individual from whom it collects personal information or causes personal information to be collected is told

- (a) the purpose for collecting it,
- (b) the legal authority for collecting it, and
- (c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.

- prepare an access and privacy brochure and make copies widely available, including when proceedings are started;
- inform parties about the parties' own responsibilities to include in any documents to be filed only that personal information (about themselves or another person) that is necessary to inform the tribunal about the nature of the claim or dispute and to establish or challenge the claim or dispute; and
- require the parties to expressly acknowledge having read and understood the tribunal's access and privacy policy (including policies for the posting decisions on its website if this is the case), when filing initiating documents, including any e-filed forms.

- ***Providing Routine Access vs. Access by Statute***

Openness is enhanced when tribunals simply make as many of their records as possible accessible to the public, (being mindful of course of any privacy interests). This means that, as much as possible, members of the public are able to access routine documents without having to resort to statutory access procedures.

Tribunals may wish to consider what types or classes of records they could make accessible routinely, without any privacy concerns. This may include:

- records that document information that the tribunal routinely releases to the public such as information sheets, pamphlets and guidelines;
- information that may not be routinely released to the public, but in which there is no privacy interest, such as hearing statistics and office policies; and
- decisions, and reasons for the decisions, that the tribunal makes accessible to the public (see more on this below).

In addition, the tribunal may want to have in place policies to provide "routine" access to the tribunal case file, if requested by a party or their authorised representative. However, that policy should include a means to ensure that the person requesting access is, in fact, a party. For example, the policy might

provide that in-person access to tribunal case files require proof of identification, and that for other access, copies should only be sent to the address on record in the tribunal file.

Requests by third parties for access to a tribunal case file should be handled under the formal statutory access request, to ensure full consideration of all privacy and other issues. This will especially apply to documents filed in anticipation of a hearing that then gets cancelled and may not ever proceed (for example, if the matter is resolved.)

- ***E-Access to Records***

Many of the privacy concerns have arisen because of the increasing use of the internet to provide access to tribunal records, in particular, the posting of decisions and the reasons for those decisions. While the posting of reasons for decision on the internet has a very good rationale – increased public knowledge of how and what a tribunal is doing (and search tools on a website can enhance that public access) – many of these decisions can contain a significant amount of personal information.

Previously, when most tribunal documents were simply paper records filed in the tribunal office, the physical impediments to accessing the information contained in the records provided what the courts have called “practical obscurity”.<sup>14</sup> This meant that the requirement of having to go to a tribunal office and sift through what might be significant amounts of information meant most personal information remained private. However, the increasingly widespread use of the internet and growing practise of making documents accessible on the internet, when combined with powerful search engines, means a considerable amount of personal information about individuals can now be located, with relative ease and at very little or no cost to the person searching.

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<sup>14</sup> United States Department of Justice et al. v. Reporters Committee for Freedom of the Press et al. (1989) 489 U.S. 749.

In making policies about electronic access to documents, tribunals will want to consider the nature of the record and the sensitivity of the information in it, including:

- the type of records the tribunal will make widely available to the public, including posting on its website;
- whether the public should have any access to certain types of records, or if access should be limited to only parties;
- if the records are to be accessible electronically by the parties, how will the parties' right to access the documents ("authentication") be established electronically;
- whether access to a particular type of document should be limited to "in-person" only, to continue to provide "practical obscurity";
- whether the search tools that are made available on the tribunal's website, should be designed to limit the possibility of "aggregating" information for secondary uses that are unrelated to the public interest in transparency;
- whether only a single search should be allowed or if multiple searches will be permitted;
- if multiple searches are allowed, will the searches be tracked to ensure the searches are being conducted for proper purposes; and
- whether to be permitted to complete multiple searches a user should have to enter into an agreement with the tribunal regarding how the information will be used.

- ***Exhibits***

Exhibits are the documents filed by a party to support their case, or to challenge the case of another party. While section 61 of the ATA expressly exempts exhibits filed at a public hearing from the scope of FIPPA, a tribunal may still want to develop policies on how it will treat requests for access to these records.

Many parties to tribunal proceedings submit documentary evidence or other types of evidence to substantiate their claims. This may include bank statements, business contracts or medical reports, all of which contain highly sensitive

personal information. In submitting these types of records, parties generally do not expect them to be widely disseminated to the public. In developing access and privacy policies with respect to exhibits, things to consider include:

- whether to prohibit or otherwise limit public access to exhibits, or to treat those requests as a formal statutory access request, to ensure full consideration of all privacy and other issues;
- whether access should be limited to only those exhibits relied on and referred to in the tribunal's decision;
- whether personal information contained in the exhibit, particularly where it is extraneous to the tribunal's decision, can be easily discerned and severed; and
- whether a party must be given notice of and the opportunity to respond to a request for access to that party's documents that are exhibits.

- ***Tape Recordings and Transcripts***

Section 61 of the ATA exempts tape recordings and transcripts of tribunal proceedings from the scope of FIPPA. Many tribunals no longer record hearings due to the high costs of doing so, and the even higher costs of obtaining a transcript. However recordings and transcripts, if available, are generally made accessible to the parties for appeal or judicial review purposes, although a policy to ensure the security of access to a recording and/or the payment of the costs of providing a copy may be desirable. Some tribunals also require the party to provide the tribunal with a copy of any transcript the party has made.

With respect to other persons who are not parties to the dispute or claim, transparency is generally served by providing public access to hearings. Allowing access to tape recordings and transcripts may not serve any additional purpose. However, if a tribunal is considering releasing tape recordings or transcripts to the persons who are not parties, policy considerations around that release may include:

- the nature of the personal information and personal identifiers that may be contained in the recording or transcript, and the costs associated with severing it; and
- whether to consider release only on a case-by-case basis, requiring the person to apply to the tribunal and justify the need for access in consideration of the competing interests of transparency and privacy, with prior notice to the persons whose privacy interests may be affected.

- ***Dispute Resolution Records***

Section 61 of the ATA exempts records from a dispute resolution process from the scope of FIPPA. In addition, the enabling statutes or regulations or the rules of procedure of most tribunals designate these records as confidential and participants are typically required to give an undertaking to maintain confidentiality. The reason dispute resolution records are confidential (and generally inadmissible in tribunal proceedings) is to promote the full discussion that may be necessary to achieve resolution without a hearing. Making these records available to others could defeat the purpose of the dispute resolution process and no public purpose would be served.

To prevent inadvertent disclosure of dispute resolution records, tribunals should ensure that these records are either kept in separate files or sealed and separated from other records in the tribunal case file. Protocols about accessing these records should be made clear to staff.

## **Publishing Tribunal Decisions**

Publication of tribunal decisions can be an important aspect of transparency. Publishing tribunal decisions can provide the public with useful information about tribunal practices and proceedings, how the tribunal applies its enabling legislation, and how the tribunal has decided prior cases and why.

- ***Accessibility***

Most tribunals make their decisions accessible to the public, either on their website or in paper form. If section 50 of the ATA has been adopted, the tribunal will be required to make their decisions accessible to the public. Other tribunals are permitted or may be required to publish their decisions by their enabling legislation. Yet others may be permitted to publish their decisions only if they take steps to remove the parties' personal identifiers.

- ***Privacy Issues***

Section 61 of the ATA exempts most tribunals from the FIPPA requirement to sever personal information from decisions, if the public has access to those decisions.<sup>15</sup> This means tribunals can publish decisions that contain personal identifiers. However, while publication of tribunal decisions is an important way to provide information and make tribunal operations more transparent, publication of sensitive personal information, especially on a website, may present the potential for misuse of that information.

In addition, it would seem contrary to the intent of protecting privacy rights under FIPPA if personal information contained in a tribunal record - which may be protected from disclosure by FIPPA - is then released to the public by setting out that information in a tribunal decision, unless the information is critical to the decision being made and the parties' and public understanding of why the decision is being made. A key consideration may be whether the information is necessary should the court or other oversight body be asked to review or reconsider the tribunal's decision.

Sensitive personal information includes:

- health information;
- information about sexual orientation, sexual history, or sexual abuse;

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<sup>15</sup> See AJO Information Bulletin on this topic at note 12.

- the personal identifiers of children and other family members;
- other specific factual information that could identify a party, like names of small towns where persons reside.

Generally, it should not be necessary to include personal identifiers such as birthdates, SIN numbers, credit card numbers, and financial account numbers in tribunal decisions.

To limit the potential for disclosure of personal information in its decisions, tribunals may consider adopting policies that:

- remove personal information that may identify parties or witnesses; and
- if the personal information is important to support the decision for the parties and any possible review rights, whether it can be anonymized so the persons affected cannot be identified.

Other considerations may include:

- whether publication of a party's name in the tribunal decision serves a public policy purpose, such as deterrence;
- whether personal information can be separated from the body of the decision and placed instead in appendices, which are provided only to the parties (and the court, if necessary on a review or appeal);
- whether all of the tribunal's decisions need to be published on its website or only the leading cases;
- whether publishing decision summaries on the website, instead of full-text decisions is sufficient to satisfy the public information needs; and
- whether tribunal decisions that must contain sensitive personal information should not be published on the website, at all.

## Conclusion

While it is important for administrative tribunals to conduct their proceedings and provide access to their records in an open and transparent manner, it is also important to protect the privacy of the parties involved in their proceedings. This is particularly important where the personal information is sensitive and decisions are made available online.

Tribunals are encouraged to consider and adopt policies and procedures that take into consideration privacy principles when collecting, using and disclosing personal information. These policies and procedures should reflect where the administrative tribunal falls on the privacy continuum and, to the extent possible, cover all aspects of the tribunals' activities related to the handling of personal information.

This Guide has been jointly prepared by the OIPC for British Columbia and the BC Ministry of Attorney General's AJO.

## Resources

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