

Privacy Checklist for Personal Information Exchange Agreements

December 1998

1. Statutory Authority for Data Matching

Collection (Section 26)

Initial questions:

- Is the statutory authority for the data sharing arrangement clearly stated in the agreement?
- What is the statutory authority?

At least one of the following must be checked:

- Is there express statutory authority for the collection of the information?
- Is the information being collected for law enforcement purposes?
- Does sharing the information relate directly to and is it necessary for an operating program or activity of the public body collecting the information?

At least one of the following sources of information must be checked:

- Is any information collected *directly from the individual*?
- If any of the information is not collected directly, then one of the following must be checked:
 - Will the public body seek the consent of the individual whom the information is about before collection? OR
 - What provision(s) of sections 33 to 36 is (are) being used to collect the information from another public body in accordance with s. 27(1)(b)? OR
 - Is there a specific act or regulation authorizing the public body to collect the personal information? (s. 27(1)(a)(iii)) OR
 - Indicate which provision of s. 27(1)(c) is being used to collect the information.

Disclosure (Section 33)

At least one of the following must be checked:

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- Have the affected individuals identified the information to be disclosed and consented to its disclosure?
 - Is the information being disclosed for the purpose for which it was obtained or compiled?
 - Is the disclosure consistent with this purpose, whatever the original purpose for collecting the information,?
 - Is the disclosure of the information required to comply with an enactment of, or with a treaty, arrangement or agreement made under an enactment of, British Columbia or Canada?
 - Is the information to be disclosed to an officer or employee of the public body or a minister and is the information necessary for the performance of the duties, or necessary for the protection of the health or safety, of the officer, employee or minister?
 - Is the information to be disclosed for the purpose of collecting a debt or fine owing by an individual to the government of British Columbia or to a public body?
 - Is the information to be disclosed to the British Columbia Archives and Records Service, or the archives of a public body, for archival purposes?
 - Is the public body a law enforcement agency and is it disclosing the information to another law enforcement agency in Canada?
 - Is the public body a law enforcement agency which is going to disclose the information to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority?
 - Is the information to be disclosed for a research purpose where the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form or the research purpose has been approved by the commissioner?

AND

- Is the information to be disclosed for a research purpose where any record linkage is not harmful to the individuals that the information is about and that the benefits to be derived from the record linkage are clearly in the public interest?

AND

- Is the information to be disclosed for a research purpose where the head of the public body concerned has approved conditions relating to the security and confidentiality; the removal or destruction of individual identifiers at the earliest reasonable time; the prohibition of any subsequent use or disclosure of that information in individually identifiable form without the express authorization of that public body; and the person to whom that information is disclosed has signed an agreement to comply with the approved conditions, this Act and any of the public body's policies and procedures relating to the confidentiality of personal information?

- Is the British Columbia Archives and Record Service, or the archives of a public body, going to disclose the information for archival or historical purposes? If yes, will the disclosure not be an unreasonable invasion of personal privacy under section 22? If the disclosure is historical research, is it in accordance with section 35? Is the information about someone who has been dead for 20 or more years? Is the information in a record that has been in existence for 100 or more years?

2. Purpose and Reason for Data Sharing

- State the purpose for the sharing the information.

- Is this purpose one that the Act allows the public body to collect or disclose the personal information?

- Why is it necessary to share the information to achieve the purpose?

- Are there suitable alternatives that would achieve the purpose as effectively as sharing the information in this manner?

- Do the benefits of sharing the information outweigh the costs to personal privacy (cost-benefit analysis)?

- Is the personal information to be shared going to be used for research purposes?

3. Elements of Personal Information to be Collected/Used/Disclosed

- List the personal information to be exchanged.

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- How often will personal information be shared (monthly, yearly, as needed, etc.)?
 - If information will be shared on an as needed basis, what criteria will be used to determine sharing is required at any given time?
 - Does the agreement specify the medium of exchange?
 - What measures will be taken to ensure the personal information is secure during transit and storage?

4. Use of Personal Information

- How is the recipient using the information?
- Will the personal information be used for any secondary purposes?
- Is there a provision that prohibits any use of the information that is not specified by the agreement?
- Is there a provision that limits the parties' use of the information to those listed in the agreement?

5. Disclosure

- Is there a provision that prohibits any disclosure of the information that is not specified by the agreement?
- Under what circumstances, if any, can the recipient disclose to another party the information shared by the source?
- Does the agreement state that any such disclosure must be in accordance with the Act?

6. Notice Requirements

- Should the individuals be notified when their personal information is shared under the agreement?
- Is the sharing of information limited to an individual or group, or is it to be part of a general exchange of information?

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- Are there compelling reasons why an individual should not be notified of a specific exchange of information (e.g. would notification interfere with the effectiveness of an investigation)?
 - If it is a general exchange of information, is it sufficient that the individuals are notified when the information is originally collected from them that it may be shared in the future pursuant to the agreement and for the purposes listed?

7. Accuracy and Completeness of Information

- Will the parties independently verify the accuracy and completeness of the information received before it is used to make an administrative decision or before they take action based on that information?
- Will the party disclosing the information independently verify the accuracy and completeness of the information received before disclosing it?
- Do individuals have an opportunity to address an adverse finding resulting from the implementation of the project?
- What technical standards will be used to ensure the quality, integrity and security of the data? (see Privacy Impact Assessment Model-Detailed Worksheet-“10. Security”)
- Do the parties agree that they will not use the information shared to create a new databank?

8. Retention and Destruction

- How long can the recipient keep the information shared?
- Is the recipient to return the information to the source or is the recipient to destroy the information when the recipient can no longer keep the information and provide confirmation of destruction to the disclosing party?
- What methods can the recipient use to destroy the information?
- What methods can the recipient use to return the information to the source? Will the information be secure during transit using any of the permitted methods?

How does the *Document Disposal Act* apply to the information shared?

9. Termination Date

What is the termination date for the agreement?

Is a renewal clause necessary?

Is there provision for amending the agreement?

10. Signing Authority and Contacts

Does the agreement identify who has signing authority for each party?

Does the agreement identify who the appropriate contacts are for each party (i.e. who has authority to initiate exchanges)?

11. Other Clauses

Is there a provision that ensures that the other clauses of this agreement do not require or permit an activity that contravenes the Act?

12. Consultation with OIPC

Do the parties require a letter from the Commissioner or the office that the office reviewed and/or commented on drafts of the agreement?