



Privacy Guidelines for Strata Corporations and Strata Agents

July 30, 2009

Purpose of these Guidelines

These guidelines are intended to assist strata corporations and strata agents in discharging their duties under the *Strata Property Act* (“SPA”) in a manner that respects the privacy of owners and tenants¹ under the *BC Personal Information Protection Act* (“PIPA”) and promotes transparency in the operation of strata corporations.

In British Columbia, strata corporations and strata agents acting on their behalf must adhere to the privacy rules contained in PIPA.

Introduction

These guidelines refer solely to strata corporations that include but are not limited to, duplexes, triplexes, commercial and industrial strata corporations, strata councils and agents and their agents employed by strata corporations.

These guidelines do not constitute a decision or finding by the Office of the Information and Privacy Commissioner (“OIPC”) respecting any matter under OIPC’s jurisdiction under PIPA. These guidelines do not affect the powers, duties or functions of the OIPC respecting any complaint, investigation or other matter under or connected with PIPA and the matters addressed in this document.

These guidelines were created as a result of the valuable contribution of a number of individuals, representing the interests of condominium owners.²

¹ In this document, when referring to “**owners and tenants**”, this reference includes registered strata lot owners, a tenant who has been assigned a landlord’s right to obtain copies of documents, tenants who are family members as defined in the *Strata Property Regulations*, tenants who have leases of three years or greater, and any person authorized in writing by an owner or tenant with a right to inspection.

² Our office would like to thank the following individuals and organization for their valuable contribution to the creation of these Guidelines: Tony Gioventu of CHOA (Condominium Home Owners Association), Kevin Thom of SPABC (Strata Property Agents of BC), Garth Cambrey of PAMA (Professional Association of Managing Agents), David Parsons, Anthony Cavanaugh and Angela Girard of RECBC (Real Estate Council of BC), Bettina Rodenkirchen formerly with RECBC, Peter Grimmert with the Financial Institutions Commission, D. Lawrence Munn and Patrick Williams both with Clark Wilson, Adrienne Murray (lawyer), Jeannette Van Den Bulk, Lara Berglund and Jason Eamer-Goult with the Ministry of Labour and Citizens’ Services.

TABLE OF CONTENTS

<u>Section</u>		<u>Page #</u>
1	Definition for personal information	3
2	Overview of how PIPA protects personal information	3
3	Responsibility for PIPA compliance	4
4	Collection of personal information generally	5
5	Collection of personal information with consent	5
6	Collection of personal information without consent	6
7	Use of personal information	8
8	Disclosure of personal information	8
9	Withdrawing consent to collection, use and disclosure	9
10	Retention of personal information	9
11	Duty to protect personal information from loss and other risks	10
12	Responding to an individual's request for information	11
13	Fees that a strata corporation may charge for responding to an individual's access request	13
14	Responding to an individual's request for correction of their personal information	13
15	Rules that apply to the personal information of employees or independent contractors	14
16	Privacy tips for minute taking at strata corporation meetings	15
17	Privacy issues relating to audio or video surveillance and access control and monitoring systems	17
18	Guidelines for handling requests for complaint records	19
19	Responding to privacy complaints	20
20	Creating a strata corporation's privacy policy	20
21	Treatment of personal information collected before PIPA came into force	20
22	Responding to privacy breaches	21
Index #1	Guidelines for creating a strata corporation privacy policy	22
Index #2	Four key steps in responding to a privacy breach	26

1. Definition for “personal information”

Personal information is information about an “identifiable individual” and includes things such as name, age, weight, height, home address, home phone number, race, ethnic origin, sexual orientation, medical information, marital status, religion, finances, education and employment, as well as factual accounts or opinions about that individual. For example, one owner’s opinion of another owner would be the personal information of the person being described.

Some of the common types of personal information that strata corporations manage include:

- Name, address and phone number
- Banking or credit card information
- Emergency contact information
- Owner/tenant’s insurance particulars
- Names of family members living with an owner or occupying the strata lot
- Debts owed to the strata corporation by an owner
- Vehicle license numbers

Personal information does not include “contact information”, which is information that enables an individual to be contacted at a place of business. Contact information includes a person’s name, business address, business telephone number, business fax number and business email address. PIPA does apply to personal information in the control of organizations, such as strata corporations, but it does not apply to contact information.

2. Overview of how PIPA protects personal information

PIPA gives owners and tenants some control over their personal information by imposing rules on strata corporations around their collection, use and disclosure of personal information.

Generally, PIPA gives owners and tenants the right to:

- be told the purpose for, and consent to, a strata corporation’s collection use or disclosure of their personal information;
- expect a strata corporation to collect, use or disclose personal information for purposes that are reasonable and appropriate;
- know who in the strata corporation is responsible for protecting personal information;
- expect a strata corporation to protect personal information by taking appropriate security measures;
- expect that the personal information a strata corporation uses is accurate and complete for the purpose for which it was collected;
- request access to their personal information held by the strata corporation;
- request their personal information be corrected; and
- have their complaints about how a strata corporation handles personal information addressed.

Generally, PIPA requires a strata corporation to:

- designate someone to be accountable on the strata corporation's behalf for its compliance with PIPA;
- obtain the consent of owners and tenants before it collects, uses or discloses personal information (except in specified circumstances where consent is not required or is implied);
- tell owners and tenants upon request why personal information is being collected, how it is being used and to whom it has been disclosed;
- use, disclose and retain personal information only for the same reasonable purposes for which it was collected (unless fresh consent is obtained for a new use or disclosure);
- ensure that personal information it collects is accurate and complete for the purpose for which it was collected;
- respond to requests for personal information completely and without delay;
- have personal information policies that are clear, understandable and readily available; and
- destroy, erase or make anonymous personal information about owners and tenants that the strata corporation no longer needs for the purpose for which it was collected and for legal or business purposes.

3. Responsibility for PIPA compliance

PIPA requires that each strata corporation appoint one or more persons to be accountable on the strata corporation's behalf for ensuring compliance with PIPA. These people are commonly referred to as "privacy officers". Privacy officers are usually either strata council members or this responsibility has been delegated to the strata corporation's strata manager.

Upon request, the strata corporation must give individuals the privacy officer's title and contact information (e.g., address, telephone number and email address). It is helpful if the privacy officer's name is also provided.

The roles the privacy officer would usually perform include to:

- ensure that a strata corporation's privacy policy and procedures are being followed;
- respond to requests by strata owners and tenants for access to their personal information;
- review personal information security safeguards, storage and retention policies and procedures on a periodic basis;
- respond to requests for access to personal information under PIPA; and
- handle all complaints in relation to the collection, use and disclosure of personal information under PIPA.

4. Collection of personal information generally

PIPA requires that an organization must not collect personal information unless:

1. the individual gives consent to the collection,
2. PIPA authorizes the collection without the consent of the individual, or
3. PIPA deems the collection to be consented to by the individual.

Before a strata corporation collects personal information, it must assess the purposes for which it collects personal information. This means a strata corporation must determine whether the personal information it intends to collect is in fact necessary for the operation of the strata corporation. **Strata corporations should only collect the minimum amount of personal information reasonably necessary for it to fulfill its obligations under SPA and other relevant legislation.** For example, some of the legitimate purposes for the collection of personal information by a strata corporation will be so that it can properly identify owners and tenants and to facilitate communication with them. Purposes, such as those just mentioned, should be documented in the privacy policies and procedures of the strata corporation.

5. Collection of personal information with consent

There are two types of consent, express and implied. “Express consent” means that the individual specifically consents either orally or in writing to the strata corporation collecting, using or disclosing his or her personal information for specified purposes. For example, a strata corporation might obtain express consent from an owner or tenant to collect personal information to allow the strata corporation to automatically deduct monthly strata fees from a bank account. Whereas, “implied consent” is considered to be given when an individual, knowing the purpose for the collection of his or her personal information, voluntarily gives the information to the strata corporation. For example, owners or tenants who sign a volunteer sheet for yard clean-up have provided implied consent to be contacted by the strata corporation for that purpose. It is not necessary for words of consent to be used.

If a strata corporation attempts to obtain the express consent of an individual to collect his or her personal information, the individual’s consent must be obtained prior to the personal information being collected.

It is generally a good practice to seek and obtain the express consent from owners or tenants to collect any personal information since this enhances transparency and fosters trust.

- **Volunteering personal information to a strata corporation**

Some individuals may volunteer personal information to the strata corporation. Before collecting or recording such personal information, the strata corporation should determine whether it has the consent of the person, who provided the information, to use it or disclose it to others. The strata corporation should make a decision whether or not to return the personal information to the person providing it, to destroy the information immediately or to retain that information. If the strata corporation decides to retain this

personal information in its records, it should also make a determination as to how long the personal information should be stored before it is securely destroyed.

6. Collection of personal information without consent

PIPA allows for the collection of personal information *without* consent in certain circumstances. Those likely to be most relevant for strata corporations are discussed below.

- **The collection is required or authorized by law**

Section 35 of SPA provides authority for the strata corporation to collect personal information in order to create the following records without the consent of owners and tenants:

- Minutes of annual general meetings, special general meetings and strata council meetings, including the results of any vote;
- A list of council members;
- A list of owners with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall numbers, if any, and unit entitlements;
- A list of names and addresses of mortgagees who are individuals, not organizations, who have filed a Mortgagee's Request for Notification (otherwise known as a, "Form C") under the SPA;
- A list of names of tenants;
- A list of assignments of voting or other rights by landlords to tenants under the SPA;
- Books of account showing money received and spent and the reason for the receipt or expenditure; and
- Any other records required by the *Strata Property Regulation*, for example a list of contractors and subcontractors responsible for the original construction of the strata corporation.

Strata corporations may also collect personal information pursuant to sections 59, 115 and 116 of SPA.

Section 59(3) of SPA lists the information that must be included in an "Information Certificate", which includes for example the amount that an owner owes the strata corporation.

Section 115 of SPA relates to a "Certificate of Payment", in relation to monies that are owed by an owner to the strata corporation.

Section 116 of SPA relates to a "Certificate of Lien". If an owner owes money to a strata corporation, a strata corporation may register a lien against an owner's strata lot at the Land Title Office.

If a strata corporation requires owners or tenants to supply additional personal information not specified in SPA, it should pass a specific bylaw detailing the purpose of the collection and use of those pieces of personal information. This means the collection would be authorized by law. However, a strata corporation should ensure that only the minimum amount of personal information necessary to achieve the purpose of the bylaw is collected.

For example, a strata corporation may have properly registered bylaws requiring that owners and tenants provide the following personal information to it so that the strata council can properly manage the strata corporation:

- banking or credit card information to allow pre-authorized payments (“PAP”) to pay strata fees;
- information regarding pets in a suite;
- personal information collected through the use of video surveillance equipment;
- names of all persons living in a suite; and
- information created by a computerized access key fob system, if the activity of the fob is being collected and/or recorded by the strata corporation.

The following are some other examples, where a strata corporation might collect personal information without the consent of the person:

- **The collection is clearly in the interests of the individual and consent cannot be obtained in a timely way**

For example, if a couple is leaving their strata unit empty while they vacation for an extensive period of time out of the country, they may instruct a trusted neighbour or relative to visit their unit to check it and pick up mail. If an emergency situation arose, the strata corporation may have to collect some of the owners’ personal information from the person looking after the unit, in order to contact the vacationing owners quickly.

- **It is reasonable to expect that collection with the consent of the individual would compromise the availability or the accuracy of the personal information and the collection is reasonable for an investigation or a proceeding**

Strata corporations may collect personal information without consent for the purpose of investigating complaints about bylaw infractions, if obtaining consent would compromise the availability or the accuracy of the information. As well, the collection of the information must be reasonably required for the investigation. For example, to establish that an owner’s child is living with his parents in contravention of the strata corporation’s bylaws in an over-55 building, the strata council may collect relevant information about the situation from other witnesses without the consent of the owner, under investigation. This is especially the case if obtaining consent would compromise the availability of the information necessary to determine whether a bylaw has been contravened.

- **The information is necessary to facilitate the collection of a debt or a payment of a debt owed by the strata corporation**

Strata corporations may collect, without consent, personal information that is reasonably required to collect debts owing to the strata corporation.

- **The personal information is available from a public source**

A strata corporation can collect an owner or tenant's telephone number without consent if it is listed in a publicly available source, such as a telephone book, pursuant to *Personal Information Protection Act Regulation 6*, which lists prescribed sources of public information such as information that appears in publicly available telephone directories or through Directory Assistance.

7. Use of personal information

A strata corporation may only use personal information for the purposes for which it was collected. The "primary purposes" for which personal information is collected by a strata corporation should be identical to those purposes identified in the strata corporation's privacy policies and procedures. Any other use of the personal information will be an unauthorized secondary use of personal information unless the individual has consented to its use or PIPA authorizes that other use without the individual's consent. A strata corporation must ensure that it uses only the minimum amount and type of personal information necessary to carry out those primary purposes.

However, a strata corporation may use personal information without consent for the same reasons it may collect personal information without consent, as discussed in section 6 above. Those situations include, for example emergencies, to investigation of bylaw infractions, collection of debts and if authorized by law.

8. Disclosure of personal information

A strata corporation may only disclose personal information to someone else, including another organization, for the purposes for which it was collected. The strata corporation also must ensure that it discloses only the minimum amount and type of information necessary to carry out those purposes.

If express consent is given to a strata corporation, it may disclose personal information to a third party. If however, express consent is not obtained, there are still certain circumstances, which allow a strata corporation to disclose personal information without the consent of the individual. They are generally the same situations for which the strata corporation can collect or use personal information without consent, as discussed above in sections 6 and 7. Those situations include emergencies, to investigate bylaw infractions or to collect debts. In addition, strata corporations may disclose personal information without consent to a lawyer, who is representing the strata corporation.

If it is required to or authorized by law, a strata corporation can disclose personal information without consent. For example, section 36 of the SPA states that on receiving a request the strata corporation must make the records referred to in

section 35 of SPA available for inspection by, and provide copies to, an owner or other person authorized in writing by an owner or tenant to inspect and obtain copies of records for their benefits. However, in certain instances PIPA will require that the entire record not be released, for example complaint letters. Please refer to section 18 of these guidelines for a more detailed explanation.

Strata corporations may receive requests for personal information from federal, provincial or municipal government agencies or law enforcement agencies such as the police. If a strata corporation is asked to disclose personal information to a public body or a law enforcement agency without a warrant, subpoena or court order, it must satisfy itself that the request is a bona fide request in aid of an investigation in considering whether or not to disclose the information. The strata corporation needs to confirm that the disclosure is to a public body or a law enforcement agency in Canada, which concerns an offence under Canadian laws, and which would assist in their investigation or making a decision whether or not to undertake an investigation. The disclosure of personal information should assist the public bodies in determining whether the offence has taken place or whether charges should be laid or the offence should be prosecuted.

If a public body or a law enforcement agency makes an oral request to a strata corporation for an owner or tenant's personal information, it is advisable that the strata corporation request that the agency put its demand in writing, set out its statutory authority for making the request and providing the agency's internal file number. For example, the police may request access to a video surveillance tape or access records for their investigation into a criminal act.

9. Withdrawing consent to collection, use or disclosure

An individual may withdraw consent to the collection, use or disclosure of his or her personal information by giving the strata corporation reasonable notice that the person is revoking his or her prior consent. However, if the personal information is required pursuant to section 35 or another section of the SPA, or pursuant to the strata corporation bylaws, then consent may not be withdrawn. For example, an individual could not withdraw his consent to his personal information being used to collect outstanding strata fees especially if it would frustrate the performance of such a legal obligation. A strata corporation is also obligated to inform the individual, seeking to withdraw his or her consent to the collection, use or disclosure of his or her personal information, the potential consequences of such a withdrawal of consent.

10. Retention of personal information

Under PIPA, if the strata corporation uses an individual's personal information to make a decision that directly affects the individual, it must keep that information for at least one year after the date of that decision. For example, if a strata corporation has collected personal information in the course of a bylaw infraction matter, the personal information must be retained for a minimum of one year from the date that the original decision was made by the strata corporation.

PIPA also requires that strata corporations destroy or securely dispose of personal information when it is no longer needed to fulfill any purpose or retention is no longer necessary for legal or business purposes and it is no longer required to be maintained by SPA.

Other laws may require retention of information and even dictate the length of retention. If those laws require personal information to be retained longer than the one year minimum set out in PIPA, the longer retention period applies. For example, Part 4.1 of the *Strata Property Regulation* stipulates that a strata corporation must retain, all of which may contain personal information:

- permanently, any decision of an arbitrator or judge in a proceeding in which the strata corporation was a party, and any legal opinions obtained by the strata corporation;
- for at least six years, all minutes of annual and special general meetings and council meetings, the book of accounts showing money received and spent and the reason for the receipt or expenditure, waivers and consents under sections 41, 44 or 45 of SPA, the budget and financial statement for the current year and for previous years, bank statements, cancelled cheques and certificates of deposit, information certificates issued under section 59 of SPA and written contracts to which the strata corporation is a party;
- for at least two years, all correspondence sent or received by the strata corporation and strata council;
- current copies of the following records and documents: a list of council members, a list of owners (with their strata lot addresses), mailing addresses (if different), strata lot numbers as shown on the strata plan, parking stall numbers, if any, unit entitlements, names and addresses of mortgagees who have filed a Mortgagee's Request for Notification under section 60 of SPA, names of tenants, and assignments of voting or other rights by landlords to tenants under sections 147 and 148 of SPA; and
- for various time periods the records and documents given to the strata corporation by the owner developer under section 20 of SPA, or obtained by the strata corporation under section 23 of SPA.

11. Duty to protect personal information from loss and other risks

PIPA requires strata corporations to make "reasonable security arrangements" to protect personal information from "unauthorized access, collection, use, disclosure, copying, modification or disposal or similar risks".

These risks include:

- someone being able to read, or collect, use, copy or disclose, personal information when he or she is not supposed to be able to;
- someone stealing or losing personal information; or
- someone changing, destroying or improperly disposing of personal information.

Safeguards should be appropriate to the sensitivity of the information. For example, one would expect a higher level of security for financial information that could be used for identity theft or fraud than for a list of pets and unit numbers.

Examples of safeguards include:

- Locking file cabinets and areas where files that contain personal information are stored;
- If there is a strata manager's office or strata council meeting room, ensuring a "clean desk" policy is followed. In other words, when records containing personal information are not being used, they are stored in a locked filing cabinet as opposed to being left on a desk;
- Allowing only authorized individuals access to files;
- If personal information is stored on a portable storage device, such as a laptop computer, that device should have a wire cable and lock attaching it to something solid such as a heavy desk, which prevents someone easily walking off with it. When the laptop is not being used, it should be stored in a locked cabinet;
- Ensuring that all personal information is stored on an encrypted personal computer or other electronic storage device;
- PIPA requires that a strata corporation takes reasonable security measures for the protection of personal information under its care and control. A best practice is that when a person wishes to discard a computer or any other memory storage device, it should be physically destroyed or completely erased using appropriate commercially available wiping software programs;
- Shredding papers containing personal information rather than just placing them in a garbage can or recycling bin;
- Developing and implementing confidentiality policies for members of the strata council;
- Ensuring that any third party hired to manage personal information on behalf of the strata corporation is aware of and bound by the strata corporation's privacy policy; and
- Ensuring that strata council members understand that the personal information they are privy to is only to be used for strata corporation business and not for sharing with their neighbours.

12. Responding to an individual's request for information

A strata corporation may receive two different types of requests for information. One is a request for personal information made under PIPA. The other is a request made for strata corporation records pursuant to SPA. There are different rules for each type of request.

Requests for personal information made under PIPA

Under PIPA, owners and tenants have a right to request access to their own personal information, to know how their information is or has been used, and to whom the strata corporation has disclosed the information. Strata corporations may charge a minimal fee for providing copies of records that contain personal information, but must not charge a fee to an employee for giving access to that employee's own personal information.

It is important to note that PIPA does not give an individual the right to request and receive someone else's personal information unless that other individual provides written authorization for that access. In addition, PIPA does not provide a right of general access to the strata corporation's records.

Under PIPA, a strata corporation must respond to written requests for personal information within 30 business days. The response must include:

- A statement of whether or not the person is entitled to access to the requested records;
- If access is denied, the reasons and legal authority for refusing access; and
- The name and contact information of someone who can answer questions about the response.

In some circumstances, a strata corporation must or may refuse a person's request to access their own information. For example, section 23 of PIPA lists some exceptions including if disclosure would put another person's safety at risk, would harm an investigation or legal proceeding, would reveal someone else's personal information, or would reveal confidential business information. Under PIPA, a strata corporation must, wherever possible, sever the record, and withhold only the information that PIPA allows or requires the strata corporation to refuse to disclose and release the remainder of the record. Please refer to section 18 of these guidelines for a more detailed explanation.

If an individual is not satisfied with the strata corporation's response, he or she may ask the OIPC to review the matter.

Anyone can request their own personal information that is being retained by the strata corporation. For example, a guest visiting a strata corporation building could request a copy of the video surveillance tape that shows the guest entering the building. Despite the fact that the person requesting the information is not an owner or tenant of the building, the strata corporation would be obliged to respond to this person's request pursuant to PIPA.

Requests for records listed under section 35 of the Strata Property Act

Under section 36 of SPA, any registered strata lot owner, a tenant who has been assigned a landlord's right to obtain copies of documents, tenants who are family members (as defined in the Strata Property Regulation), tenants who have leases of three years or greater, and any person authorized in writing by an owner or tenant can request copies of the records listed in section 35 of SPA.³ However, in certain instances

³ A list of those records can be found on page 5 of these Guidelines under the heading "The collection is required or authorized by law".

PIPA will require that the entire record not be released, for example complaint letters. Please refer to section 18 of these guidelines for a more detailed explanation.

A strata corporation must comply with a request for records under section 35 of SPA within two weeks of receipt of the request, unless the request is for the strata corporation bylaws or rules, in which case it has only one week to comply.

Under SPA, an owner or tenant is not entitled to receive any information relating to a lawsuit in which they are a party with an interest contrary to the strata corporation's. In that case, the strata corporation is authorized, pursuant to section 169(1)(b) of SPA, not to provide that owner or tenant with information or documents relating to the lawsuit, including any legal opinions kept by the strata corporation under section 35(2)(h) of SPA.

13. Fees that a strata corporation may charge for responding to an individual's access request

Rules for charging fees for access to records vary, depending on which Act the request is made under. A person who has requested copies of their own personal information under PIPA may be charged a "minimal" fee by the strata corporation. This does not apply to "employee personal information", which must be provided free of charge. Please also refer to section 15 of these Guidelines with regard to employee personal information.

If a person has requested copies of strata records under section 36 of the SPA, the strata corporation may charge a fee that complies with section 4.2 of the *Strata Property Regulation*, which is 25 cents per page.

14. Responding to an individual's request for correction of their personal information

Under PIPA, strata corporations must make a reasonable effort to ensure that personal information collected by or on its behalf is accurate and complete. If the strata corporation uses that personal information to make a decision, about that individual, or if the strata corporation intends to disclose personal information to another organization, such as a strata management company or its representative, it must ensure the accuracy and completeness of its records.

This rule helps prevent the use of incorrect personal information to make a decision about an individual and the disclosure of incorrect personal information to other organizations that may use it in a manner that affects an individual.

An individual, who believes there is an error or omission in his or her personal information under the control of a strata corporation, may ask that organization to correct it.

The strata corporation must decide, on reasonable grounds, if it should correct the information. If it decides the information should be corrected, then it must be done as soon as possible. The strata corporation must also send the corrected information to every organization to which it disclosed the incorrect information during the year before the correction date.

If the strata corporation decides that the information in its records is correct and therefore declines the request to correct, it must annotate⁴ the personal information under its control with the correction that was requested but not made.

If the strata corporation receives a notice from another organization that an individual's personal information previously disclosed to it has been corrected, the strata corporation must correct the personal information that is under its control.

15. Rules that apply to the personal information of employees or independent contractors

Employee personal information is a distinct category of personal information and PIPA has special rules for the collection, use and disclosure of the personal information of employees. An employee is someone employed by the strata corporation, and includes an unpaid volunteer performing services for the organization but does not include an independent contractor. A strata council member, who is a volunteer, would still be considered an "employee" of the strata corporation under PIPA. For example, the strata corporation may retain the personal cellular telephone number of a strata council member. This would be considered to be that person's personal information.

Employee personal information

PIPA defines "employee personal information" as personal information about an individual that is collected, used or disclosed solely for the purposes reasonably required to establish, manage, or terminate an employment relationship between the organization and that individual, but does not include personal information that is not about an individual's employment.

Employee contact information and work product information

Employee personal information does not include contact information⁵ or work product information.⁶ If an employee makes a request for access to their own personal information, the response does not have to include their work product information. For example, a building maintenance report prepared by a strata corporation caretaker would be their work product information and they would not be entitled to a copy of it.

It is important to remember that while the report is the work product of the caretaker, it also could contain personal information about other individuals. These individuals would be entitled to their own personal information if they made a request under PIPA.

⁴ "Annotate" means to attach a note to the records showing the correction requested by the individual whose personal information it is.

⁵ "Contact Information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or fax number of the individual.

⁶ "Work product information" refers to information prepared by employees in the context of their work or business, but does not include personal information about other individuals referred to in the record.

For example, if the report contained personal information about owners or tenants of the building, those portion(s) of the report would be the personal information of the named owners or tenants.

Disclosure of employee personal information without consent

If the strata corporation intends to disclose employee personal information without the consent of the individual, it must notify that individual of the material that it intends to release and the purposes for the disclosure prior to the release of the materials. For example, if an owner wrote a negative letter about one of the strata council member's conduct, the portions of the letter that describe the strata council member's conduct would be the personal information of that strata council member and also potentially of the owner who wrote the letter.

However, section 18 of PIPA states that there are certain circumstances where the strata corporation would not be obligated to provide prior notice to the individual; for example a situation where seeking the consent of the individual would compromise an investigation or proceeding and the disclosure is reasonable for those purposes.

16. Privacy tips for minute taking at strata corporation meetings

PIPA does not prescribe what personal information should or should not be included in a strata corporation's minutes. The following are some general guidelines that will help the strata corporation document its decisions and actions in a manner that respects privacy principles.

Personal information that may be recorded in AGM or SGM minutes

A person is attending an AGM or an SGM, has provided implied consent to have their name, strata lot number and/or unit number recorded in the minutes.

If parties are only identified by strata lot number or unit number, an owner will still be able to identify which owner attended a meeting by comparing the strata lot number or unit number listed in the minutes with the list of owners, that each owner is entitled to request pursuant to section 35(1)(c)(i) of SPA. If the strata corporation uses sign-in sheets for attendance records and if those records are kept by the strata corporation, they may be disclosed pursuant to section 36 of SPA.

Personal information that may be recorded in strata council minutes

If a strata council member or a guest attends a strata council meeting, they have provided implied consent to have their name recorded in the strata council minutes.

Similarly, the names of any authorized people in attendance at the meeting, such as the strata manager can be noted in the minutes. The name, strata lot number and/or unit number of each strata council member, who is not attending the meeting, should also be recorded.

Section 18(3) of the Standard Bylaws states that "the results of all votes at a council meeting must be recorded in the council meeting minutes."

Minutes of strata council meetings should record all decisions made by the strata council, but need not include the exact discussions leading up to any votes. It is important that the strata council minutes clearly document how resolutions are amended and what the outcome of any votes were.

Strata councils should ensure that only the minimal amount of personal information required to provide an accurate and objective account of its decisions is recorded in the meeting minutes.

Factors to consider if the strata council prepares minutes about in camera discussions

In camera discussions may occur when a strata council discusses sensitive matters such as those listed in Bylaw 17(4) of the Standard Bylaws. Generally, it is good practice for strata council minutes to identify only the unit number or strata lot number of an owner or tenant in relation to any of the following situations:

- Whether a bylaw or rule has been contravened or allegedly contravened;
- Whether a fine has been levied;
- Whether the strata council is considering commencing legal action against an owner or tenant;
- Whether a strata unit is liable for a remedial work order in relation to repair work;
- Whether the strata corporation is owed outstanding strata fees and the total amount; and
- Whether the strata council conducted a rental restriction bylaw exemption hearing.

When discussing the above or similar issues, which may reveal an individual's personal information, the minutes should describe what the decision of the strata council was. The minutes should not reveal the name of the party affected by the strata council's decision. They should only reveal the party's strata lot number or unit number in the minutes. Similarly, if asked by another owner, a strata council member should not reveal the name of an owner or tenant who fined by the strata corporation for a bylaw infraction.

Including the details of non-payment of fees and fines and bylaw enforcement in minutes ensures that the strata corporation has a record of having made accurate and proper decisions under section 135 of SPA.

Tips for strata council minutes of a hardship application

A strata council's minutes should not identify the name of an owner, their unit number or their strata lot number in relation to a hardship application. The minutes should only describe what the decision of the strata council was (e.g., whether or not a hardship application was granted). Assuming that the strata corporation has either the standard bylaws, or one similar to the standard bylaw 17(4), no owners other than the strata council members should be present when the strata council deliberates and makes its decisions.

Comments that should *not* appear in regular strata council minutes

As a guideline, a strata council should ensure that every statement in the strata council minutes is accurate, objective and verifiable and that the minutes contain the minimum amount necessary of personal information. In the case of *McGowan v. Strata Plan NW018* [2002] BCSC 673, the BC Supreme Court commented that:

[C]omments that can be taken as critical or derogatory of individuals within the organization tend to detract from a sense of professional management and only add to antagonisms. The minutes should be carefully vetted to ensure that no such comments are included.

17. Privacy issues relating to audio or video surveillance and access control and monitoring systems

The recording of voices, the capture of images of people entering a strata corporation building or the capture of owners' movements through a strata corporation building may result in the collection of personal information about an identifiable individual within the meaning of PIPA. Any audio or video surveillance systems or access control and monitoring systems, such as a key fob system, in strata corporation buildings must comply with PIPA. Key fob systems monitor the access by owners to the common areas throughout the strata corporation building. This section sets out some considerations for strata corporations in relation to surveillance and/or access control systems.

Strata owners, tenants and guests have the right to feel and be secure in their daily lives, but they also have the right to be free from excessive and unwarranted intrusion. PIPA does not prohibit the use of video surveillance by strata corporations, but because of their inherent intrusiveness, video surveillance systems should only be used after other less privacy-intrusive measures have failed to address a serious problem. Before installing video equipment or activating a surveillance system that was installed by the original developer, the strata corporation should be prepared to justify the use of a surveillance system on the basis of verifiable, specific concerns about the personal safety of people living in a strata corporation or in order to protect personal and common property that other measures have failed to address.

The access control system should only monitor access to public parts of the strata corporation property and be required for the security of the owners. If the identities of the owners or tenants can be anonymized, such as issuing the same key fob to everyone on the same floor, then the system may be less potentially invasive to the privacy of individuals living the strata corporation while providing a secure method of accessing the building.

Before installing or operating either a video surveillance or an access control system, the strata corporation should pass a bylaw authorizing its installation and operation. In the alternative, if the strata corporation does not have such a properly passed and registered bylaw, then it should ensure that all owners consent to its use. Regardless of whether or not a bylaw has been properly registered or all the owners consent, a strata corporation should have a comprehensive written privacy policy in place that governs the use of such systems and the personal information they collect.

If the developer in the strata corporation building has already installed such surveillance or access control and monitoring systems, the strata council still has a responsibility to ensure that it is operated in a manner that is compliant with PIPA. This means that the strata corporation must have a privacy policy and either have passed a properly registered bylaw authorizing its use or passed a unanimous consent resolution.

Since the ownership and tenants may frequently change in a strata corporation building, it may be easier to pass and register a bylaw rather than obtaining each new owner's consent to operate such systems.

Generally, a strata corporation's privacy policy or policies should address the following:

- The only purposes for which the personal information collected by the video surveillance system and/or access control system will be used;
- Who is authorized to view the surveillance footage or access control records and under what circumstances;
- The location of video surveillance cameras. They should not be positioned, internally or externally, to monitor areas beyond the strata corporation property or capture images peripherally or directly through the windows of adjacent strata buildings. Video equipment should not monitor areas where owners, tenants, visitors and employees have a reasonable expectation of privacy such as change rooms and washrooms;
- The times when the cameras will be operating;
- The length of time the video recordings and access control records will be retained;
- How the video tapes and access control records will be securely stored and destroyed;
- How the strata corporation will respond to requests under PIPA for access to the video tapes and/or access control records? An individual, who is the subject of surveillance, has a right to request access his or her personal information, which includes information recorded by video cameras;
- How owners, tenants and visitors will be given notice that the premises are being monitored by video surveillance?;
- How will owners be given notice that their movements may be monitored by the key fob system.

For more detailed privacy guidelines about the use of video surveillance, please refer to *Public Surveillance System Privacy Guidelines* at [http://www.oipc.bc.ca/advice/VID-SURV\(2006\).pdf](http://www.oipc.bc.ca/advice/VID-SURV(2006).pdf) and *Guidelines for Overt Video Surveillance in the Private Sector* at: [http://www.oipc.bc.ca/news/rlsgen/Video_Surveillance_Guidelines\(March2008\).pdf](http://www.oipc.bc.ca/news/rlsgen/Video_Surveillance_Guidelines(March2008).pdf).

Audio and/or video recordings of a strata council meeting or general meeting

Unless the majority of owners or strata council members pass a resolution in favour of allowing meetings to be recorded with an audio or visual recording device, strata council or general meetings should not be recorded either by the strata corporation or by an individual. However, PIPA does not apply to the acts of a private individual, but only applies to the actions of an organization, such as a strata council or corporation. Therefore, a strata corporation may wish to consider passing a bylaw forbidding any

audio or visual recording device to be used at a strata council meeting or general meeting without the prior approval of the majority of eligible voters, who are present in person or by proxy at the time that the vote is taken.

18. Guidelines for handling requests for complaint records

The following are some guidelines to consider when handling a request for a complaint letter. A strata corporation should have a policy in place that clearly states how the strata corporation will handle complaint letters.

Section 35(2)(k) of SPA requires the strata corporation to retain copies of correspondence sent or received by the strata corporation and strata council. Similarly, section 36 of SPA states that a strata corporation must make the records and documents referred to in section 35 of SPA available for inspection by an owner (or tenant who, under section 147 or 148 of SPA, has been assigned a landlord's right to inspect and obtain copies of records and documents), or any other person authorized in writing by an owner.

Section 135 of SPA stipulates that a strata corporation must give an owner or tenant about whom a complaint has been made, the particulars of the complaint in writing and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant. The particulars of a complaint could include the following information: location, date, time, a description of bylaw infraction and a copy of the bylaw provisions that were allegedly breached.

The requirement to provide access to complaint records found in section 35 of SPA does not mean that a strata corporation must disclose the personal information of the complainant and/or other third parties set out in the original complaint letter. If after receiving the particulars of a complaint, an owner or tenant requests a copy of the actual complaint letter, the strata corporation should first consult with the author of the complaint letter to seek his or her consent to release the entire letter or portions of it.

However, in the absence of express consent from the complainant to disclose the entire letter, a strata corporation should review the contents of the letter to determine what information, if any, is the personal information of the requester and what information is the personal information of the complainant and/or other third parties. The person making the request is *only* entitled to access their own personal information, not the personal information of others. When reviewing a complaint letter, strata corporations must be aware that it is not just the name of the complainant that might reveal the identities of third parties. Other details in the complaint letter may also reveal the identities of the complainant or the third parties. Pursuant to sections 23(4)(c) and (d) of PIPA, a strata corporation must not:

- (a) disclose the personal information about another individual; and
- (b) reveal the identity of an individual who has provided personal information about another individual and the individual providing the personal information does not consent to disclosure of his or her identity.

If there is a request for the complaint letter, the strata corporation has a duty to sever ("black out") the personal information of anyone other than the requester. If the strata corporation is satisfied that no other PIPA exceptions to disclosure apply, it must release

the balance of the requester's personal information, provide written reasons explaining why information has been removed from the letter and advise the requester of his or her right to appeal to the OIPC.

It is important to note that someone's opinion about an individual is the personal information of the individual, who is the subject of the opinion, as well as the personal information of the person forming the opinion. For example, if a complainant writes "X frequently comes home late and he often raises his voice to his partner", that information is the personal information of X and could be released to X, unless it identifies either the complainant or X's partner or both.

In reviewing the letter, the strata corporation also may consider if any other exceptions to disclosure under PIPA apply, such as the strata corporation is still investigating the complaint, the material is covered by solicitor-client privilege or there is a genuine concern that harm could come to the complainant and/or others. In such circumstances, PIPA may authorize the personal information to be withheld.

19. Responding to privacy complaints

A strata corporation should have clear procedures in place for responding to complaints or to inquiries about its privacy policies and practices. The complaint procedures should be easily accessible and simple to use. The strata corporation should inform individuals who make inquiries or lodge complaints of the existence of relevant complaint procedures. Finally, the strata corporation should properly investigate all complaints and, if a complaint is found to be justified, should take appropriate measures (including, if necessary, amending its policies and practices). The OIPC's website has a tip sheet entitled: "Tips for organizations responding to a privacy complaint under PIPA", which can be found at <http://www.oipc.bc.ca/pdfs/private/TIPS4ORGS.pdf>.

20. Creating a strata corporation privacy policy

PIPA requires strata corporations to develop and follow policies and practices necessary to meet their obligations under PIPA. As part of this, strata corporations should create and follow a privacy policy. Strata corporations may wish to view the BC provincial government's template as a starting point. It is located at:

http://www.cio.gov.bc.ca/cio/priv_leg/pipa/impl_tools/pipa_tool8.page?

The guidelines for a strata corporation's privacy policy can be found under Index #1.

21. Treatment of personal information collected before PIPA came into force

A strata corporation does not have to get consent to use, disclose or retain personal information collected before January 1, 2004 (the date when PIPA came into force) so long as that information is being used, disclosed and retained for the same purpose for which it was originally collected. If the personal information is being used or disclosed for a new purpose, a new consent must be sought from the individual. Often the original

purposes for which a strata corporation collected the personal information are not different from the current use or disclosure of the personal information in question.

22. Responding to privacy breaches

A privacy breach occurs when there is unauthorized access to, or collection, use, disclosure or disposal of, personal information. Such activity is “unauthorized” if it occurs in contravention of PIPA. The most common privacy breach happens when personal information of owners or tenants or employees of the strata corporation is stolen, lost or mistakenly disclosed. Examples include when a computer containing personal information is stolen or personal information is mistakenly emailed to the wrong person.

A strata corporation should follow the four key steps in responding to a privacy breach which can be found in Index #2.

INDEX #1
(Section 20 - Creating a Strata Corporation Privacy Policy)

Guidelines for Creating A Strata Corporation Privacy Policy

Purposes For Collection, Use Or Disclosure of Personal Information

- List all of the purposes for which the strata corporation collects, uses or discloses personal information. Examples might include:
 - to identify and communicate with each strata unit owner and/or tenant;
 - to process strata fee payments;
 - to respond to emergencies;
 - to ensure the orderly management of the strata corporation;
 - to comply with legal requirements; and
 - (IF APPLICABLE) to allow for the use of video surveillance to ensure the safety of owners, tenants and guests to the strata corporation property.

Description Of Personal Information Collected

- Give a general description of the personal information a strata corporation collects, for example:
 - Name, address and phone number
 - Banking or credit card information
 - Emergency contact information
 - Vehicle description/license plates
 - Pet information
 - Names of family members living with an owner or occupying the strata lot

Collection, Use And Disclosure Of Personal Information

- State that the strata corporation will not collect, use or disclose personal information except for the identified purposes unless it has received further consent from the individual, or as permitted or required under PIPA.
- Explain how the strata corporation obtains consent to collect, use or disclose personal information.
- Explain that it will get individuals' consent to collect, use or disclose their personal information, except where the strata corporation is legally authorized or required by law to do so without consent.
- Describe possible situations where the strata corporation may collect, use or disclose personal information without an individual's knowledge or consent as allowed under sections 12, 15 and 18 of PIPA.

- Explain that individuals are considered to have given implied consent when the purpose for collecting, using or disclosing personal information would be considered obvious and the individual voluntarily provides personal information for that obvious purpose.
- In the case of employee personal information, explain that PIPA allows the strata corporation to collect, use or disclose employee personal information without consent if it is reasonable solely for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual. (Note that, in such cases, PIPA still requires the strata corporation to notify employees of the collection, use or disclosure.)
- Explain that the strata corporation will make reasonable efforts to ensure that the personal information that it collects, uses or discloses is accurate and complete.
- State that if the strata corporation retains another organization such as a strata management company, to do work for it that involves personal information, the strata corporation will ensure that there is an agreement in place that commits the organization providing services to adhere to the strata corporation's privacy policy.

Collection Of Personal Information

- Explain what information will be collected with and without the consent of the owner.
- State that the strata corporation will only collect and use personal information that is necessary to fulfill the purposes identified in the policy.
- Explain that the strata corporation will tell individuals its purpose for collecting personal information and give them a chance to refuse to give their personal information or a chance to withdraw their consent later.

Disclosure Of Personal Information

- Explain under what circumstances the strata corporation may disclose personal information to other organizations or to government bodies.
- Describe the circumstances in which personal information may be disclosed without consent.
- State that the strata corporation will disclose personal information where authorized by PIPA or required by law.

Withdrawal Of Consent

- Explain that individuals may withdraw their consent at any time by giving the strata corporation reasonable notice, but tell individuals they cannot withdraw consent where doing so would frustrate performance of a legal obligation (such as a contract between the individual and the strata corporation).
- Explain that, when individuals tell the strata corporation that they are withdrawing consent, PIPA requires the strata corporation to tell them of the likely consequences of withdrawing consent (such as the strata corporation being unable to provide them with services or goods that require their personal information).

Retention By Strata Corporation

Explain how long the strata corporation will keep personal information. Subject to the one-year retention requirement, the organization will only retain personal information for as long as necessary to fulfil the identified purposes or as long as required for a legal or business purpose. The privacy policy should be as specific as possible about how long information is retained .

Security Of Personal Information

- State that the organization has implemented reasonable security arrangements to prevent against risks such as unauthorized access, collection, use, disclosure, copying, modification or disposal of personal information and provide details.
- Explain that the strata corporation's contracts with external contractors, such as a strata management company, will have contractual terms ensuring that the contractor shall also keep any personal information that it is provided in a secure fashion. The contract may even have financial penalty clauses or a termination clause if the contractor is found to not have kept the records in a secure fashion or to have breached the strata corporation's privacy policy.

Correction of Personal Information

- Explain that individuals may write to the strata corporation and ask it to correct any errors or omissions in their personal information that is under the control of the strata corporation.
- Say that, if the strata corporation is satisfied that an individual's request for correction is reasonable, the personal information will be corrected as soon as reasonably possible.
- Explain that the strata corporation will, as soon as reasonably possible, also send an individual's corrected personal information to each organization it was disclosed to during the year before the organization corrected it.
- Explain that, if the strata corporation does not correct an individual's personal information, it will note the requested correction on copies of the personal information under its custody or control (i.e., the strata corporation will annotate its records).

Access Rights

- Tell individuals they have the right to access their personal information under a strata corporation's custody or control, how to make a request, and when they may expect a response.
- Explain that in some circumstances requests for information may be refused and that the reasons for its refusal and further steps that are available to the applicant, will be provided in writing (including any internal review by the strata corporation and the right to ask the OIPC to review the decision).

- Give the contact information for the person, who is responsible for the strata corporation's compliance with PIPA.
- Make clear that individuals not satisfied with the strata corporation's compliance with PIPA may complain to the OIPC.

INDEX #2
(Section 23 - Responding to privacy breaches)

Four Key Steps in Responding to a Privacy Breach:

1. Contain the Breach

- Immediately contain the breach by, for example, stopping the unauthorized practice, recovering the records, shutting down the system that was breached or correcting weaknesses in physical security.
- Notify the police if the breach involves theft or other criminal activity.

2. Evaluate the Risks Associated with the Breach

The strata corporation should evaluate what the potential impact of the privacy breach could be on the potentially affected parties. The strata corporation needs to make a determination whether or not the affected parties should be notified and if they are to be notified, what form the notification should take.

(i) Personal Information Involved

- What data elements have been breached? Generally, the more sensitive the data, the higher the risk is. Health information, social insurance numbers and financial information that could be used for identity theft are examples of sensitive personal information.
- What possible use is there for the personal information? Can the information be used for fraudulent or otherwise harmful purposes?

(ii) Cause and Extent of the Breach

- What was the cause of the breach?
- Is there a risk of ongoing or further exposure of the information?
- What was the extent of the unauthorized collection, use or disclosure, including the number of likely recipients and the risk of further access, use or disclosure, including in mass media or online?
- Is the information encrypted or otherwise not readily accessible?
- What steps has the strata corporation already taken to minimize the harm?

(iii) Individuals Affected by the Breach

- How many individuals are affected by the breach?
- Who was affected by the breach: employees, public, contractors, clients, service providers, other organizations?

(iv) Foreseeable Harm From the Breach

- Is there any relationship between the unauthorized recipients and the data subject?
- What harm to the individuals will result from the breach? Harm that may occur includes:
 - security risk (e.g. physical safety)
 - identity theft or fraud
 - loss of business or employment opportunities
 - hurt, humiliation, damage to reputation or relationships
- What harm could result to the strata corporation as a result of the breach? For example:
 - loss of trust in the strata corporation
 - loss of assets
 - financial exposure

3. Notifying Affected Individuals

If after the evaluation stage, the strata corporation is of the view that the affected parties should be notified, then notification of affected individuals should occur without delay if it is necessary to avoid or mitigate harm to them. Notification should happen as quickly as possible, especially if there is the chance of significant harm to the affected individuals. Some considerations in determining whether to notify individuals affected by the breach include:

- Legislation requires notification
- Contractual obligations require notification
- There is a risk of identity theft or fraud (usually because of the type of information lost, such as SIN, banking information, identification numbers)
- There is a risk of physical harm (if the loss puts an individual at risk of stalking or harassment)
- There is a risk of hurt, humiliation or damage to reputation (for example when the information lost includes medical or disciplinary records)

4. Prevention

Once immediate steps are taken to mitigate the risks associated with the breach, the strata corporation should thoroughly investigate the cause of the breach. This could require a security audit of both physical and technical security. As a result of this evaluation, the strata corporation should develop, or improve as necessary, adequate safeguards against further breach.

Policies should be reviewed and updated to reflect the lessons learned from the investigation and regularly after that. The resulting plan should also include a requirement for an audit at the end of the process to ensure that the prevention plan has been fully implemented.

The OIPC is available to assist a strata corporation in dealing with a privacy breach.