

Disclosure of personal
information of
individuals in crisis

PURPOSE OF THIS GUIDANCE DOCUMENT

In emergency situations, privacy laws in BC authorize public bodies or private organizations to responsibly disclose an individual's personal information (including information about their mental health, emotional health, or other health conditions) to third parties who may be able to help in a crisis. Privacy legislation in BC accommodates the disclosure of personal information in the event it could prevent a tragedy.

BC's [Freedom of Information and Protection of Privacy Act](#) (FIPPA) sets out how public bodies can collect, use, and disclose personal information. BC's [Personal Information Protection Act](#) (PIPA) sets out how private sector organizations can collect, use, and disclose personal information.

This guidance document informs public bodies and private organizations (including non-profit organizations) about the circumstances under which they can disclose personal information of an individual to a third party without the individual's consent in crisis situations.

DISCLOSURE

Discretionary disclosure under FIPPA: compelling circumstances

FIPPA allows for the disclosure of personal information if “compelling circumstances that affect anyone’s health or safety exist.”¹ Public bodies should consider the following factors when deciding whether to disclose information under this authority:

1. The situation does not have to be life or death for disclosure to occur;
2. The situation must be an abnormal circumstance where disclosing personal information is likely to help with an urgent situation;
3. There must be a rational connection between the disclosure and the health or safety issue that the disclosure is meant to help with; and
4. There must be a clear benefit to disclosing someone’s personal information that justifies invading their privacy.²

¹ FIPPA [s.33\(3\)\(a\)\(i\)](#)

² These factors summarize those considered by the Honourable Justice Arthur W. D. Pickup in [Sutherland v. Nova Scotia \(Community Services\) 2013](#), at paras. 32-34. This reasoning was followed in [Department of Community Services \(Re\)](#), 2020 NSOIPC 5 (CanLII), [at para. 38](#); and in [Rudderham-Gaudet v. Nova Scotia \(Health and Wellness\)](#), 2020 NSSC 20 at para. 42. In all three cases, the Justices determined that the threshold of “compelling circumstances” had not been met. These cases all related to [s. 20\(4\)\(b\)](#) of Nova Scotia’s access to information provisions which state that it is not an unreasonable invasion of a third party’s personal privacy if there are compelling circumstances affecting anyone’s health or safety. The same provision exists in Part 2 of BC’s FIPPA ([s. 22\(4\)\(b\)](#)). The “compelling circumstances” test also exists in the privacy sections of the Nova Scotia law ([see s. 27\(o\)](#)) which, like s. 33(3)(a)(i) of BC’s FIPPA, authorizes a public body to disclose personal information without a

After weighing the factors in each case, whether the public body discloses the information or not, it is a best practice for that public body to document why it decided the circumstances warranted, or did not warrant, the disclosure under the “compelling circumstances” authority. The public body must keep these notes for at least one year if it decides to disclose the personal information.³

If the public body discloses an individual’s personal information under the “compelling circumstances” authority in s. 33(3)(a)(i) of FIPPA, it must mail a notification to the individual that the disclosure has taken place, *unless* notifying them could harm anyone’s health or safety.⁴

Discretionary disclosure under FIPPA: other authorities

FIPPA also authorizes the disclosure of personal information without consent to “enable the next of kin or a friend of an injured, ill or deceased individual [to be] contacted” and for the purpose of “reducing the risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur.”⁵

Example: Disclosure of personal information by a public body (hospital)

An emergency doctor treats a patient for a severe panic attack. In the process of treating the patient, the doctor notices marks on the individual’s arm that appear to suggest a recent suicide attempt. Upon inquiry, the individual refuses to discuss the injury and simply states that their life has been very stressful lately. The patient leaves the hospital abruptly after treatment. Section 33(3)(a) of FIPPA allows the health authority to disclose information about the patient to someone who is likely to provide support to help that person (for example, a family member, close friend, or a social worker) because compelling circumstances exist that affect the individual’s health or safety and the disclosure is meant to improve the health and safety of the patient.

formal access request if the head of the public body determines that compelling circumstances exist that affect anyone’s health or safety. Note the additional requirement in [s. 33\(3\)\(a\)\(ii\)](#) of BC’s FIPPA that the public body must mail notice of the disclosure to the last known address of the individual the information is about, *unless* the head of the public body considers that the notice could harm anyone’s health or safety. The Nova Scotia cases are not binding on the OIPC or the BC Courts. However, they are the only judicial consideration available in Canada for what constitutes a “compelling circumstance” for disclosure in access and privacy legislation, therefore we are adopting these factors to assist public bodies that are determining whether a circumstance meets the threshold.

³ See s. 31 of FIPPA, which requires a public body to retain records in its custody or under its control for at least one year if the personal information is used by or on behalf of the public body to make a decision that directly affects the individual.

⁴ See s. 33(3)(a)(ii) of FIPPA

⁵ FIPPA s. 33(3)(b)

Example: Disclosure of personal information by a public body (university)⁶

A university counsellor treats a student patient who expresses wanting to “get even” with their classmates. The individual discusses visiting websites with instructions on how to build explosive devices. The counsellor’s professional opinion is that the individual is on the verge of a breakdown and is concerned that they will harm themselves or others. The counsellor determines that it may be necessary for the head of the public body to disclose the individual’s personal information to the university and law enforcement in order to prevent significant harm to the individual, students, or the public. Section 33(3)(a) of FIPPA allows for the disclosure of the individual’s personal information by the head of the public body to a third party, because compelling circumstances exist that affect the health or safety of the student’s classmates.

Example: Disclosure of personal information by a public body (government)

A government worker notices their colleague has ongoing injuries. Due to the nature of the injuries, the government worker believes they are the result of ongoing domestic abuse. Section 33(3)(b) of FIPPA allows the government worker to disclose the individual’s personal information, for example to law enforcement authorities, for the purpose of reducing the risk that an individual will be a victim of domestic abuse.

Mandatory disclosure under FIPPA

FIPPA also contains emergency disclosure provisions that *require* a public body to disclose personal information when disclosure is clearly in the public interest. This includes situations where there is a risk of significant harm to the environment or to the health or safety of the public or to a group of people and could include serious mental health concerns or threats of violence. This requirement in FIPPA applies even if no one has requested the information. Please see OIPC guidance document [Section 25: The Duty to Warn and Disclose](#).

Disclosure under PIPA

While PIPA generally requires consent in order to disclose personal information, it allows disclosure *without consent* where there are reasonable grounds to believe that compelling circumstances exist that affect the health or safety of an individual.⁷ It also authorizes disclosure without consent where disclosure is clearly in the interests of the individual and consent cannot be obtained in a timely way.⁸ PIPA also authorizes an organization to disclose

⁶ Please see OIPC Guidance Document [Emergency Disclosure of Personal Information by Universities, Colleges and other Educational Institutions](#) for more information on exercising discretion to disclose personal information during or before emergencies in educational settings.

⁷ PIPA s. 18(1)(k)

⁸ PIPA s. 18(1)(a)

personal information if the disclosure is for the purpose of contacting the next of kin or a friend of an injured, ill, or deceased individual.⁹

Example: Disclosure of personal information by a private organization

A physician in a clinic treats an individual with severe depression and suspects a dependency on prescription drugs. The physician believes that there is an imminent risk of suicide or overdose. Under s. 18(1)(k) of PIPA the physician may disclose the individual's personal information to a third party, such as a parent or a social worker, without consent, because there are compelling circumstances that affect the individual's health or safety.

Notification of disclosure under FIPPA

If a public body discloses an individual's personal information because the head of the public body determines that compelling circumstances exist that affect anyone's health or safety, the public body is required to give notice of the disclosure to the individual unless "the head of the public body considers that giving this notice could harm someone's health or safety."¹⁰

Notification of disclosure under PIPA

If an organization discloses an individual's personal information because there are reasonable grounds to believe that compelling circumstances exist that affect the health or safety of any individual, PIPA *requires* notice to be mailed to the last known address of the individual whose personal information is being disclosed.¹¹

Who can disclose under FIPPA

Some disclosure provisions in FIPPA require the head of the public body to be responsible for the decision about whether or not to disclose personal information under FIPPA.¹² Schedule 1 of FIPPA defines the "head" of a public body.¹³

A public body may delegate this responsibility.¹⁴ We recommend that each public body delegate this responsibility to a person, or the available person in a designated position, who is always readily available and trained to make that determination on behalf of the public body.

⁹ PIPA s. 18(1)(l)

¹⁰ FIPPA s. 33(3)(a)(i)

¹¹ PIPA s. 18(1)(k). Note that unlike FIPPA, there is no discretion about whether to mail notice of the disclosure – the organization *must* mail notice if it discloses personal information under this section.

¹² FIPPA ss. 33(3)(a) or (c), for example.

¹³ Note that s. 77 of FIPPA requires local public bodies to designate the "head" by bylaw or other legal instrument by which the local public body acts.

¹⁴ FIPPA s. 66

These individuals should then be trained on when they can disclose personal information under FIPPA. Public bodies should also train their staff to know that the individuals in this position have the delegated authority from the head of the public body to exercise discretion to disclose personal information in certain circumstances.

Who can disclose under PIPA

If there is a disclosure authority under PIPA, anyone in an organization may exercise discretion to disclose personal information under that authority. Disclosure of personal information can only occur for purposes that a reasonable person would consider appropriate in circumstances permitted by PIPA.¹⁵ Organizations should train their staff to know that they can disclose personal information in circumstances authorized by PIPA.

These guidelines are for information purposes only and do not constitute a decision or finding by the Office of the Information and Privacy Commissioner for British Columbia. These guidelines do not affect the powers, duties, or functions of the Information and Privacy Commissioner regarding any complaint, investigation, or other matter under FIPPA or PIPA.

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¹⁵ PIPA s. 17(c)