



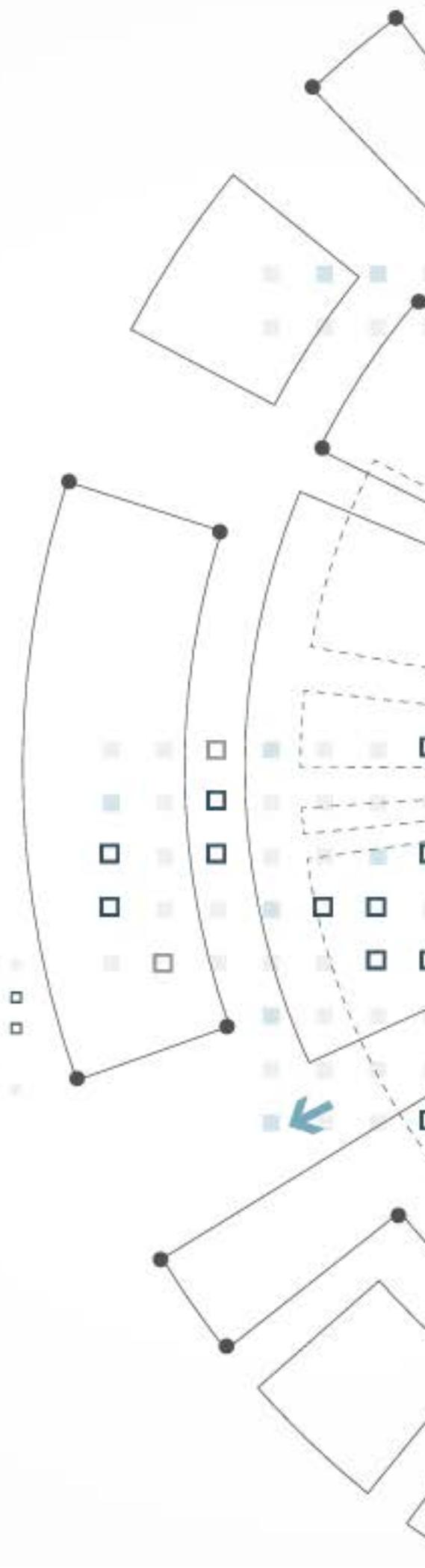
OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
*for British Columbia*

Protecting privacy. Promoting transparency.

GUIDANCE DOCUMENT

# PRIVATE SECTOR LANDLORD AND TENANTS

SEPTEMBER 2019



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## INTRODUCTION

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### 1.0 Purpose of this document

1.1 These guidelines are meant to assist landlords and the public in understanding what the rules in BC are about what personal information landlords may collect from anyone seeking to enter into a tenancy agreement, including individuals who will be living in the unit, such as family members and roommates. In the event of a discrepancy between these guidelines and our 2018 report on tenant screening, the information in these guidelines prevails.

### 2.0 Are landlords in BC bound by PIPA?

2.1 Yes. In BC, landlords must comply with the *Personal Information Protection Act* (PIPA). PIPA governs how organizations collect, use, store, disclose, and protect personal information.

2.2 PIPA applies to any person, corporation, or unincorporated association offering to rent any property, whether a secondary suite, condominium unit, or apartment.

### 3.0 What is personal information?

3.1 PIPA defines personal information as information about an identifiable individual. It includes employee personal information but does not include contact information or work product information. A name, date of birth, physical characteristic, income, or a description of an individual are all examples of personal information.

## CONSENT UNDER PIPA

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### 4.0 When does a landlord need to obtain a tenant's consent?

4.1 In most circumstances, a landlord needs consent to collect, use, or disclose an individual's personal information. In limited circumstances, a landlord does not need consent. Once a landlord collects personal information, they can only use it for purposes that a reasonable

person would consider appropriate in the circumstances and that fulfill the purposes that the landlord discloses to the individual.<sup>1</sup>

## 5.0 Can landlords require tenants to consent to the collection, use, or disclosure of their personal information?

5.1 A landlord must not, as a condition of providing a tenancy, require an individual to consent to the collection, use, or disclosure of personal information beyond what is necessary to provide that tenancy.<sup>2</sup>

5.2 If a landlord attempts to obtain consent for collecting, using, or disclosing personal information by providing false or misleading information respecting the collection, use, or disclosure of the information, including using deceptive or misleading practices, consent provided in those circumstances is not validly given.<sup>3</sup>

## 6.0 Can a tenant withdraw consent?

6.1 Yes. PIPA authorizes individuals to withdraw their consent for an organization to collect, use, or disclose their personal information.<sup>4</sup> A landlord cannot prohibit an individual from withdrawing their consent. If an individual withdraws their consent, a landlord must inform the individual of the likely consequences. For example, if the tenant refuses to provide references, a landlord must tell them they could refuse to rent to them.

## 7.0 Does consent need to be in writing?

7.1 No. PIPA does not require consent to be in writing. However, it is a good idea for a landlord to get consent in writing wherever practical so that if someone challenges the consent later on the landlord can demonstrate that the individual consented.

## 8.0 Can a landlord collect personal information without consent?

8.1 In limited circumstances, PIPA does not require an organization to obtain consent before collecting personal information.<sup>5</sup> For example, s. 12(1)(e) of PIPA authorizes a landlord to collect personal information from publicly prescribed sources.<sup>6</sup>

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<sup>1</sup> Or for purposes that are otherwise permitted under PIPA.

<sup>2</sup> PIPA s. 7(2).

<sup>3</sup> PIPA s. 7(3).

<sup>4</sup> PIPA s. 9(1).

<sup>5</sup> PIPA s. 12.

<sup>6</sup> These sources are set out in [s. 6 of the PIPA Regulations](#).

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## BEFORE ESTABLISHING A TENANCY

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### 9.0 Can a landlord require a tenant's identification?

9.1 Yes. It is reasonable for a landlord to collect information from an individual's valid government-issued photo identification. A landlord should view the identification and then return it.<sup>7</sup> A landlord should not copy or retain an individual's identification.<sup>8</sup>

### 10.0 Can a landlord collect information about an applicant's current and previous tenancies?

10.1 Yes. If an individual has rented before, it is reasonable to collect information about where they rented and for how long. It is also reasonable to collect information about whether they have ever been evicted and whether they left their previous tenancy because of a dispute with the landlord or because of issues with their neighbors or building managers.

### 11.0 Can a landlord require references?

11.1 Yes. A landlord may collect information about an individual from a reference, but only with the tenant's consent.

11.2 Any personal information exchanged between landlords about prospective/past tenants must be limited to information related to the individual's suitability as a tenant, such as complaints during the tenancy, damage to property, and rent payment history. It would be reasonable for a landlord to decline to process an application if a tenant refuses to provide contact information for previous landlords.

### 12.0 Can a landlord collect a tenant report from a reporting agency,<sup>9</sup> such as tenant pay habits?

12.1 A landlord could collect a report from a reporting agency if the landlord first told the tenant the purposes for which they were collecting it and if they obtained the tenant's consent.

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<sup>7</sup> See s. 8 of PIPA.

<sup>8</sup> See, for example, see [Investigation Report F12-03](#) regarding the use of employment-related criminal record checks by the government. At section 3.1.1 of that Report, former Commissioner Denham wrote: "It is not necessary for government to collect photocopies of two pieces of identification to perform a criminal record check. Instead, government should simply examine an individual's identification to confirm identity and not record any information or retain a copy of any identification."

<sup>9</sup> Section 106 of the Business Practices and Consumer Protection Act, [SBC 2004] CH 2 defines "reporting agency" as meaning a person, whether in British Columbia or not, who (a) provides reports for gain or profit, (b) provides reports on a routine, non-profit basis as an ancillary part of a business carried on for gain or profit, or (c) is designated by regulation."

12.2 In addition, the landlord's collection of the personal information on the report must only be for purposes that a reasonable person would consider appropriate in the circumstances and that fulfilled the purposes that the landlord disclosed to the tenant about why they were collecting it.

### 13.0 Can a landlord collect a tenant's information using an automated screening service?

13.1 Automated screening services use software that collects and uses personal information about an individual from a range of electronic sources. This software produces a report or score that the landlord can use to help them decide whether to offer someone a tenancy.

13.2 A landlord cannot rely on another company to collect personal information about a tenant that the landlord wouldn't be authorized to collect on their own. This means that both the landlord and the third party must have the consent of the prospective tenant. Assuming they have consent, an automated screening service could collect and use personal information about a tenant on behalf of the landlord for the purposes of determining whether to offer a tenancy.

13.3 Additionally, landlords should use significant caution when evaluating whether to use an automated screening service to select a tenant. Software that uses personal information from multiple sources to make a decision about an individual could be inaccurate, irrelevant, or use excessive amounts of personal information unrelated to a tenancy. In addition, the mechanisms by which the software makes a decision about an individual might be inaccessible to the landlord, which makes it difficult for a landlord to evaluate how accurate or reliable a decision about that individual would be.

### 14.0 Can a landlord collect information from court records and tribunal decisions like the Residential Tenancy Branch?

14.1 British Columbia's electronic court registry and published tribunal decisions are prescribed sources of publically available information.<sup>10</sup> PIPA does not require a landlord to obtain an individual's consent that they are collecting their personal information from these sources.<sup>11</sup> However, landlords must only collect information about an individual for purposes that a reasonable person would consider appropriate in the circumstances.<sup>12</sup>

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10 Link to electronic court registry: <https://justice.gov.bc.ca/cso/index.do>. Link to searchable database of Residential Tenancy Branch decisions: <http://www.housing.gov.bc.ca/rtb/search.html>.

<sup>11</sup> PIPA s. 12(1)(e), BC Reg 473/2003 s. 6.

<sup>12</sup> PIPA, s. 11.

## 15.0 Can a landlord require a criminal record check?

15.1 Information about an individual's criminal past is sensitive because it can be very stigmatizing. A landlord may only collect information about an individual's criminal history for purposes that a reasonable person would consider appropriate in the circumstances and only for the purposes that they disclose to the prospective tenant.<sup>13</sup> For example, it may be reasonable if the rental unit is in the same building as a daycare.

15.2 If a situation arises where a landlord seeks to collect personal information about an individual's criminal past, including whether or not that individual *has* a criminal past, the landlord should have clear reasons for doing so and should be ready to justify why a reasonable person would consider appropriate in the circumstances.

15.3 A landlord cannot require an individual to consent to a criminal record check as a condition of providing a tenancy unless that information is necessary to provide that tenancy.<sup>14</sup> In most situations, it will not be necessary.

## 16.0 Can a landlord require a tenant's age?

16.1 Yes, but only if it is for purposes that a reasonable person would consider appropriate in the circumstances. For example, if the landlord is renting a unit in a building where all the housing is reserved for individuals who are over 55 (or units where at least one occupant must be over 55), it is reasonable for a landlord to collect personal information to confirm a tenant's age.<sup>[1]</sup> Similarly, because a landlord can refuse to rent to a minor, it is reasonable for a landlord to require proof of an applicant's age to determine if they are over 19 where that may be in doubt.

16.2 A landlord may also require an applicant's date of birth to confirm identity before performing a credit check if the tenant does not provide their SIN for that purpose.

## 17.0 Can a landlord collect information about a tenant's income/employment?

17.1 If an individual is not able to provide adequate references, it may be reasonable for a landlord to collect personal information about proof of income or employment to establish that the tenant can pay rent.

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<sup>13</sup> PIPA ss. 10(1) and 11(a).

<sup>14</sup> PIPA s. 7(2).

<sup>[1]</sup> See [s. 10\(2\)\(b\)\(i\) of the Human Rights Code](#).

## 18.0 Can a landlord require a credit report?

18.1 Credit reports contain sensitive personal information about whether someone pays their debts, how many lenders have extended credit to them, and other personal information. When extending a tenancy offer to an individual, a landlord assumes significant financial and property risks. Credit checks can be a resource for landlords to assist them in evaluating an individual's risk profile.

18.2 Before asking a tenant to consent to a credit check, a landlord should evaluate whether a reasonable person would consider it appropriate in the circumstances to collect this information.<sup>15</sup> A landlord can request consent to perform a credit check as part of their standard application process but should only perform the check towards the end of the selection process on the select few individuals the landlord is considering offering a tenancy to.

## 19.0 Can a landlord collect a tenant's Social Insurance Number?

19.1 If a landlord determines that it is reasonable to conduct a credit check on an individual, it is reasonable for the landlord to collect the individual's social insurance number for the purposes of identifying them to the reporting agency in order to receive the correct report. Often, an individual's full name and date of birth will be sufficient to identify the individual to a reporting agency. For this reason, landlords should avoid asking all applicants for their social insurance number or should make providing the social insurance number optional on their application form. Social insurance numbers can be used for identity theft, so it is best to avoid collecting them whenever possible.

## 20.0 Can a landlord collect information protected under the *Human Rights Code*?

20.1 Section 10(1) of the [Human Rights Code](#) prohibits a landlord from refusing to rent to someone based on their:

Race	Colour	Ancestry
Place of origin	Religion	Marital status
Family status	Physical or mental disability	Sex
Gender identity or expression	Age	Sexual orientation
Lawful source of income		

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<sup>15</sup> See PIPA s, 11.

20.2 Using personal information that is protected under the *Code* is usually not a purpose that a reasonable person would consider appropriate in the circumstances and the collection would not be authorized under PIPA. However, the protections against discrimination are not absolute; exceptions and defences exist. Landlords should read the *Code* and consult the [BC Human Rights Tribunal](#) if they require more information.

## 21.0 Can a landlord collect personal information about an individual from social media?

21.1 It is a common misconception that any information on a social media account is fair game. This is not true.

21.1 PIPA authorizes landlords to collect personal information without consent from publically available sources. Those sources are defined in PIPA and are very narrow.<sup>16</sup> They include professional business directories, newspapers, and magazines, but they exclude social media.

21.2 Even if a landlord obtains consent to collect information from an individual's social media account, collecting this information is still problematic because the landlord will usually collect more information about that individual than what a reasonable person would consider appropriate in the circumstances. Even if a landlord does not *use* the extra information, by viewing it, they have collected it.

21.3 Another consideration is that it can be difficult to determine the accuracy of information about individuals on social media and from many internet sources. PIPA requires an organization to make a reasonable effort to ensure that personal information it collects is accurate and complete if the personal information is likely to be used by the organization to make a decision that affects the individual, or if it is likely to be disclosed by the organization to another organization.<sup>17</sup>

## 22.0 Can a landlord require a prospective tenant's banking information?

22.1 No. A landlord cannot require a tenant's banking information prior to establishing the tenancy. However, after an applicant has been selected the landlord must be able to collect rent money and may do so in numerous ways: cash, automated bank withdrawal, personal cheque, money order, pre-authorized payment, email money transfer, or credit card.

22.2 A landlord also cannot require an individual to consent to the collection of their banking information as a condition of providing a tenancy unless that information is necessary to provide that tenancy.<sup>18</sup>

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<sup>16</sup> PIPA [s. 12\(1\)\(e\)](#) and [s. 6](#) of the PIPA Regulations.

<sup>17</sup> PIPA s. 33.

<sup>18</sup> PIPA s. 7(2).

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## AFTER A TENANCY IS ESTABLISHED

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### 23.0 What personal information can landlords request from tenants?

23.1 It may be reasonable for a landlord to request more detailed information once an individual becomes a tenant. For example, a landlord may need to record a tenant's licence plate number to ensure that unauthorized vehicles are not parked on the property.

### 24.0 Can a landlord require a tenant's insurance policy?

24.1 A landlord can only require a tenant's insurance policy only if collecting this information is for a purpose that a reasonable person would consider appropriate in those circumstances. For example, if a landlord must satisfy their own insurance company that their tenants have a certain type or amount of insurance, then collecting information from the prospective tenant to satisfy that requirement would be authorized under PIPA.

### 25.0 Can a landlord use personal information to collect a debt?

25.1 Yes. PIPA authorizes an organization to collect, use, and disclose personal information without consent if the personal information is necessary to facilitate the collection of a debt owed to the organization.<sup>19</sup>

### 26.0 Can a landlord disclose an individual's personal information?

26.1 Generally, landlords require the consent of the individual the information is about to disclose their personal information. PIPA specifies where consent is not required to disclose personal information.<sup>20</sup> Some examples include:

- where it is clearly in the interests of the individual and consent cannot be obtained in a timely way;
- where the disclosure is required or authorized by law; and
- when the disclosure is for the purpose of contacting next of kin or a friend of an injured, ill, or deceased individual.

26.2 A landlord should record any disclosures that occur because in most cases, PIPA requires an organization to tell an individual to whom they have disclosed their personal information if that individual requests that information.<sup>21</sup>

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<sup>19</sup> PIPA ss. 12(1)(j), 15(1)(j), and 18(1)(g).

<sup>20</sup> PIPA s. 18(1).

<sup>21</sup> PIPA Part 7.

## 27.0 Can a landlord disclose personal information to a law enforcement or other federal or provincial agency?

27.1 PIPA authorizes an organization to disclose personal information without consent to a public body or a law enforcement agency in Canada for the purposes of an investigation.<sup>22</sup>

27.2 If a public body or law enforcement agency makes an oral request to a landlord for a tenant's personal information, the landlord should request that the agency put its demand in writing, set out its statutory authority for making the request, and provide the agency's internal file number. This includes, for example, if police request access to video surveillance footage.

27.3 Asking for this information in writing is one way a landlord can help meet PIPA's protection of personal information requirements for an organization to protect personal information in its custody or under its control by making reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, copying, modification or disposal, or similar risks.<sup>23</sup>

## 28.0 Can a landlord post notices containing personal information on a tenant's door?

28.1 Yes. [Section 88 of the Residential Tenancy Act](#) authorizes individuals to post all documents (other than those referred to in s. 89 of that Act) "by attaching a copy to a door or other conspicuous place at the address at which the person resides." PIPA therefore does not require a landlord to obtain the tenant's consent to post a notice on their door, because the disclosure of personal information is authorized by law.<sup>24</sup>

## 29.0 Is it reasonable for the mailboxes or entry buzzers in an apartment building to have tenants' names on them?

29.1 Yes, if the tenant consents.

## 30.0 Can a landlord distribute a tenant phone list to tenants?

30.1 Yes, if the tenant consents.

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<sup>22</sup> PIPA s. 18(1)(j).

<sup>23</sup> PIPA s. 34.

<sup>24</sup> See PIPA, s. 12(1)(h).

### 31.0 Can individuals request their own personal information held by landlords?

31.1 Yes. Individuals can request their own personal information from organizations. Subject to certain exceptions, an organization must give them that information.<sup>25</sup>

### 32.0 How should a landlord store tenants' personal information?

32.1 PIPA requires an organization to protect personal information in its custody or under its control by making reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, copying, modification or disposal, or similar risks.<sup>26</sup>

32.2 PIPA requires organizations to secure personal information in a way that is inaccessible to unauthorized parties, such as in a locked filing cabinet in a locked room, or stored on an encrypted computer or secure server with robust security protection. Encrypt any personal information on a portable device such as a smartphone or USB memory stick.

For more information, see our [Security Self-Assessment tool](#).

### 33.0 What are the rules for landlords in not-for-profit organizations?

33.1 If a landlord is part of a not-for-profit organization that offers housing for a specific group of individuals, the general rule is that they can collect personal information about an individual to establish that the individual belongs to the group for which the not-for-profit organization is providing housing. This is because [s. 41 of the BC Human Rights Code](#) exempts not-for-profit housing providers from legal prohibitions against granting preferences to members of certain identifiable groups or classes of persons based on a protected personal characteristic that would otherwise be protected in tenancy.

33.2 The exemption for not-for-profit housing providers is not absolute. Not-for-profit landlords must still comply with PIPA, even with the exemption in the *Human Rights Code*. For example, they must still follow the rule in PIPA that they must only collect personal information for purposes that a reasonable person would consider appropriate in the circumstances.<sup>27</sup>

### 34.0 Is a landlord allowed to photograph a tenant's apartment to advertise it for rent?

34.1 If the landlord takes photographs in a tenant's apartment, they must not collect a tenant's personal information unless they have prior consent. "Collection" could occur if the landlord's photographs contained images that would identify a tenant or another individual.

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<sup>25</sup> PIPA s. 23, see also section 8 of our [Guide to PIPA](#) for complete information about responding to requests from individuals for their own information.

<sup>26</sup> PIPA s. 34.

<sup>27</sup> PIPA s. 11.

34.2 To prevent inadvertent collection of personal information, tenants should remove or cover items that contain personal information, such as documents or photographs, when a landlord is photographing their apartment.

### 35.0 Can a landlord install surveillance?

35.1 PIPA limits the collection of personal information for purposes that a reasonable person would consider appropriate in the circumstances.<sup>28</sup> A landlord must be able to demonstrate they meet that requirement if they install surveillance. In addition, the landlord requires the consent of all the individuals who will be subject to the surveillance.<sup>29</sup> To meet the consent requirements of PIPA, a landlord must communicate what personal information they are collecting and why.<sup>30</sup>

35.2 For more information, see our PIPA Surveillance Guidelines under the resources tab on [our website](#).

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 PIPA.

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<sup>28</sup> PIPA s. 11.

<sup>29</sup> Unless PIPA authorizes the collection without consent – these circumstances are limited.

<sup>30</sup> PIPA Part 3. Consent can be implied when all the purposes for the collection would be obvious to a reasonable person and if the individual voluntarily provides their personal information for those purposes (see [s. 8\(1\)](#) of PIPA).