

This guidance has been developed to assist public bodies that are considering requiring proof of vaccination from employees (including contractors and volunteers) as a condition of returning to the workplace. It is not intended to provide information about the COVID vaccine or the value of vaccination in general. Please see information published by Public Health if you have questions on these topics.

This guidance is based on the situation at the time of publication. We remind public bodies that they should review decisions made during the public health emergency on a regular basis to ensure that they remain necessary and current. Privacy rights do not need to be a barrier to necessary public health measures. At the same time, the pandemic should not be used as an excuse to encroach on privacy rights unnecessarily. This guidance is intended to illustrate how, with care, public health measures and privacy rights can work together.

SCOPE

This guidance applies to public bodies that are collecting, or intending to collect, information about the vaccination status of employees. Since the publication of the original guidance, the Government of Newfoundland and Labrador has issued a Mandatory Vaccine Policy that applies to all provincial government departments, agencies, boards and commissions. Public bodies that are subject to this mandate have already established processes for collecting, using and disclosing personal information in compliance with the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)*.

This guidance does not apply to public bodies that are collecting vaccination status from individuals seeking services from the public body, nor does it address the legal responsibilities of private companies.

A provincial vaccine passport has also been introduced, which provides individuals with a verifiable means of proving they are vaccinated in order to obtain certain categories of services or to enter certain premises. When the QR code of the NLVaxPass is read by the approved NLVaxVerify reader app, all the individual conducting the scan learns is the vaccination status and name of the individual. This offers a ready-made solution to public bodies seeking to obtain proof of vaccination status from employees.

VACCINATION STATUS OF EMPLOYEES

Someone's vaccination status is that person's personal information, therefore any public body that collects the vaccination status of employees must comply with *ATIPPA, 2015*. At its most basic, public bodies must establish the purpose and authority for any collection, collect the least amount of information to meet the purpose, share it only with those who need to know, keep it secure and destroy it when no longer needed.



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It is important that preliminary details of the program are known prior to privacy assessment. For example:

- Will the program apply to all employees, or just those in certain positions or locations?
- Will the program be mandatory or voluntary?
- Will the program be part of a larger public health effort including masking, hand washing and social distancing, or will it be an isolated initiative?
- If employees are expected to be vaccinated, what are the consequences if employees are not?
- Will there be a grace period to allow employees to comply?
- What if an employee seeks an exemption? Public bodies are reminded that there are human rights protections or medical exemptions that may need to be considered, so it is important to have a process in place to consider any such requests.
- Employers may also need to consult collective agreement provisions and involve trade union representatives in the process. They may also wish to refer employees to other resources available, such as an Employee Assistance Program.
- What vaccinations will be accepted? Vaccines that have received Health Canada or World Health Organization approval? What about an employee who is considered fully vaccinated in another jurisdiction, but not in Newfoundland and Labrador?

PRIVACY CONSIDERATIONS

Identified Purpose

Public bodies considering the collection of vaccination status information from employees must first identify the purpose of the program; what is the program objective? A public body should have a clear and compelling reason for collecting personal information such as vaccination status. The identified purpose of the program should also acknowledge any exceptions and identify any consequences of non-compliance.

As the COVID-19 pandemic is a rapidly evolving situation, public bodies should ensure frequent review of the program to ensure that the purpose is still current and the collection remains justifiable.

Collection

There must be a clear legal authority for each intended purpose of collection. It is possible that clear legal authority for vaccine passports, and possibly for collecting vaccination information for employment purposes, could come from new or existing legislation, or from a public health order. Otherwise, public bodies should look to section 61 of *ATIPPA, 2015*.

Section 61 establishes the purposes for which public bodies may collect personal information. While it is possible that other sections may apply, it is likely that the majority of public bodies will rely on section 61(c), which states, “No personal information may be collected by or for a public body unless ...(c) that information relates directly to and is necessary for an operating program or activity of the public body.”

For example, section 4 of the [Occupational Health and Safety Act](#) requires employers, including public bodies, to ensure the health, safety and welfare of employees. If a public body's collection relates directly to and is necessary for the health and safety of employees, then that collection would likely be authorized.

Section 62 of *ATIPPA, 2015* details how personal information is to be collected. Public bodies seeking vaccination status of employees should collect the information directly from the individual, and be prepared to explain the reason and legal authority for collection, and contact information, as required by section 62(2).

Even if public bodies have the authority to collect personal information, they should collect the minimum necessary for the identified purpose. Will employers be asking employees about their vaccination status, or will they be requesting to see proof of vaccination? If they are asking to see proof, will they be making a copy or just scanning the NLVaxPass using the approved NLVaxVerify app? The public body should also identify what vaccinations will be accepted, and be prepared to be presented with documentation from another jurisdiction or potentially in another language. It should also establish clear deadlines for the new requirement, and provide time for compliance. Further, public bodies should be prepared to assess requests for exemptions for a medical condition or other protected grounds. These questions should be addressed prior to program launch.

Section 63 requires reasonable efforts to ensure accuracy and completeness. Section 65 requires public bodies to retain such information for at least a year after using it. While public bodies may wish to request that employees show reliable proof of vaccination for the purpose of determining who can return to work, will it be necessary to copy and retain that record? If the accuracy of the information can be determined simply by inspection, it will be more difficult to justify the more privacy invasive action of copying and retaining it.

Use and Disclosure

A public body also needs to identify the authority for use and disclosure of the information it collects, and to always use and disclose only the minimum necessary. Section 66 of *ATIPPA, 2015* establishes authority for various uses. One of the most common is 66(1)(a): use for the purpose for which the information was collected, or for a consistent purpose. To be considered a consistent purpose, the use should have a reasonable and direct connection to the purpose, and be necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body.

The ATIPP Office's [Protection of Privacy: Policy and Procedures Manual](#) provides useful information on the meaning of use versus disclosure on page 38:

Using personal information usually means using it internally (within the department or agency) for the administration of a project or program. For example, an individual has provided specific personal information to a department and that department has collected this information for the purpose of permitting that individual to apply for a student loan. Employees in that

department may use that individual's personal information for the purposes of evaluating whether or not that individual is eligible for a student loan.

Disclosing personal information means showing, sending, telling or giving someone, another department, agency or organization the personal information in question. Information is disclosed externally when provided outside the original public body (i.e. department or agency or outside the Government of Newfoundland and Labrador). To continue the example above, providing the student's name and address when requested by Canada Revenue Agency may be a valid disclosure of personal information.

Public bodies should consider who in the organization should have access to employees' proof of vaccination information. In many organizations it may be possible to restrict use of the information to a human resources department, to a very few people, or even to the one individual who compiles the list.

Disclosure of personal information is discussed in sections 68 to 71 of *ATIPPA, 2015*. Public bodies considering disclosure should ensure clear identification of the authority for that disclosure.

Section 72 of *ATIPPA, 2015* requires that departments or branches of the executive government must conduct a privacy assessment during the development of a program or service. OIPC strongly encourages any other public body considering collecting information about its employees' vaccination status conduct a privacy assessment. Even if the statute does not require all PIAs to be provided to OIPC, we are always happy to provide feedback on courtesy copies that are shared.

Safeguards

Section 64 requires that information be protected with reasonable safeguards; this generally includes administrative, physical and technical measures.

From an administrative perspective, public bodies would be wise to develop a policy that outlines the authority for the collection; a statement of the purpose; a statement as to whether employees will be asked to show a vaccination certificate; a statement on possible actions to be taken if the employee has not had the vaccination; a statement on where information will be stored; a statement containing details about any potential use or disclosure of the information and the individual in the entity responsible for the use or disclosure; and a statement on when the information will be destroyed. In developing policy, public bodies must ensure that the authority for the collection, use and disclosure of personal information is in compliance with *ATIPPA, 2015*. Given that the COVID-19 pandemic is a rapidly changing situation, the policy should also include a review schedule.

There should also be technical and physical safeguards. The focus of this discussion is on where records will be stored and who will have access. This is sensitive personal information, so it should be secured with restricted access throughout all parts of the program. If, for example, employees submit scanned copies of forms to managers, who then pass them along to Human Resources, the information should be protected on the email system, and not

retained unnecessarily at intermediate steps. If paper copies are provided, they should be securely stored and transported. If vaccination documentation is stored with other records, such as within personnel files, the public body should critically analyze the retention schedule and decide whether a separate standard should be developed.

Compliance Challenge

Public bodies are reminded that individuals are able to file a privacy complaint with OIPC. If a complaint is received, we will want to know what the public body told its employees about the program. Public bodies are encouraged to be open, clear and transparent in any communication with employees. They should identify an individual who can respond to questions about the program and provide links to resources.

Conclusion

Any public body considering collecting proof of vaccination from employees should consider the above, along with other applicable legislation, including human rights and employment law. Further, they should consult with employees, unions, and legal counsel. If such a program is developed with sufficient care, the result will not only be effective for the purpose, but will be widely accepted by employees, oversight bodies and the public.

RESOURCES

OIPC would like to recognize the many great resources produced by other jurisdictions; many of these documents were leveraged in the development of this document. In particular, OIPC NL would like to recognize:

Federal, Provincial and Territorial Privacy [Commissioners' Joint Statement on Privacy and COVID-19 Vaccine Passports](#)

Canadian Council of Parliamentary Ombudsman's [Fairness Principles for Public Service Providers Regarding the Use of Vaccine Certification](#)

[Advisory from the Office of the Information and Privacy Commissioner of Saskatchewan on questions regarding vaccines for organizations, employers and health trustees](#)

Alberta Office of the Information and Privacy Commissioner:
[Pandemic FAQ: Customer Lists](#)

British Columbia Office of the information and Privacy Commissioner:
[Collecting Personal Information at Food and Drink establishments, gatherings, and events during COVID-19](#)

Ontario Office of the Information and Privacy Commissioner:
[COVID Alert and Your Privacy](#)

Newfoundland and Labrador Resources
[Access to Information and Protection of Privacy Act, 2015](#)

[Government of Newfoundland and Labrador’s Mandatory Vaccination Web Page](#)

[Government of Newfoundland and Labrador’s VaxPass Web Page](#)

[Government of Newfoundland and Labrador’s Life with COVID 19 Web Page](#)

[Newfoundland and Labrador Public Health Orders](#)

[Occupational Health and Safety Policy - Treasury Board Secretariat \(gov.nl.ca\)](#)

International Resource

The Information Commissioner’s Office in Great Britain has issued resources; although British legislation is different from the legislation in Newfoundland and Labrador, the principles set out are good ones and may have some application here. [Vaccination and COVID status checks | ICO](#)

Canadian Standards Association’s Privacy Principles	<i>ATIPPA, 2015</i>
<p>Accountability</p> <p>An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization’s compliance with the following principles.</p>	<p>Section 62(2)(c)</p> <p>Section 110</p>
<p>Identifying Purpose</p> <p>The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.</p>	<p>Section 61</p> <p>Section 62(2)</p> <p>Section 69</p>
<p>Consent</p> <p>The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.</p>	<p>Section 66(1)(b)</p> <p>Section 68(1)(b)</p> <p>Section 108</p>
<p>Limiting Collection</p> <p>The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.</p>	<p>Section 62</p>

<p>Limiting Use, Disclosure and Retention</p> <p>Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfillment of those purposes.</p>	<p>Sections 65-71</p>
<p>Accuracy</p> <p>Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.</p>	<p>Section 63 Section 10</p>
<p>Safeguards</p> <p>Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.</p>	<p>Section 64</p>
<p>Openness</p> <p>An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.</p>	<p>Section 3 Section 111</p>
<p>Individual Access</p> <p>Upon request, an individual shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.</p>	<p>Section 3(2)(b) Section 10 Section 18</p>
<p>Challenging Compliance</p> <p>An individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals accountable for the organization's compliance.</p>	<p>Section 3(f) Section 73</p>