

Indirect Collection of Personal Information

The *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)* provides that the Office of Information and Privacy Commissioner (OIPC) may authorize indirect collection of personal information by a public body. This guidance document has been developed to assist public bodies seeking authorization from the Commissioner to indirectly collect information.

Direct Collection versus Indirect Collection

Direct collection is when information is collected directly from the individual the information is about. Indirect collection occurs when information is obtained from someone other than the individual the information is about. While it is preferable to directly collect information from individuals, it is not always possible or practical. Sections 62 and 95 of the *ATIPPA, 2015* address indirect collection.

Section 62(1) states:

62. (1) A public body shall collect personal information directly from the individual the information is about unless

(a) another method of collection is authorized by

- (i) that individual,*
- (ii) the commissioner under paragraph 95(1)(c), or*
- (iii) an Act or regulation;*

(b) the information may be disclosed to the public body under sections 68 to 71;

(c) the information is collected for the purpose of

- (i) determining suitability for an honour or award including an honorary degree, scholarship, prize or bursary,*
- (ii) an existing or anticipated proceeding before a court or a judicial or quasi-judicial tribunal,*
- (iii) collecting a debt or fine or making a payment, or*
- (iv) law enforcement; or*

(d) collection of the information is in the interest of the individual and time or circumstances do not permit collection directly from the individual.

Section 95(1)(c) states:

In addition to the commissioner's powers and duties under Parts II and III, the commissioner may

- (c) review and authorize the collection of personal information from sources other than the individual the information is about;*



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There are many circumstances where indirect collections may be required. For example, British Columbia's OIPC authorized BC Hydro to indirectly collect information about the presence of dogs on the property of account holders through its employees. This indirect collection contributed directly to the safety of workers and sometimes resulted in more accurate information on file, thus mitigating risks of physical harm. One-time indirect collections have been authorized when programs are moved between public bodies or from private sector organizations to a public body. Authority for indirect collections may also be sought to expand databases, for example merging two databases to develop a more robust description of a particular population.

What the OIPC Requires in a Public Body Submission

Public bodies seeking authorization from the Commissioner to collect information from sources other than the individual that the information is about must provide a written submission containing a sufficient level of detail to assist the Commissioner in making the decision.

Applications should explain why it is not practical and/or possible to directly collect personal information. In addition, applications must explain why the indirect collection is justified, including the purpose for which (and to whom) it is to be collected, used or disclosed.

In addition to any other information that you believe is relevant, please ensure the following is included in your submission:

1. the purpose of the program requiring the collection;
2. the purpose of the collection (a detailed explanation of why the personal information is required, such as administrative purposes, to carry out a program, research, etc.);
3. the personal information to be collected and why it is required (list individual data fields to be collected and a reason why each field is required);
4. the conditions of the original collection of the personal information, including a description of the organization that first collected the information, the legal authority to collect the information, whether the collection was direct, and the nature of any consent provided;
5. the timeframe of the original collection;
6. The method by which the personal information would be collected (on a form, from another institution, by telephone, etc);
7. the number of people the personal information will be about (i.e. how many people will be affected by the indirect collection);
8. the duration of the collection (an on-going process, time limited or a one-time collection; specific dates should be provided);
9. how long the personal information will be retained;

10. if it is to be disclosed, to whom and for what purpose;
11. how the accuracy, completeness, currency and security of the personal information is and will be maintained;
12. the consequences of non-collection (i.e. if authority is refused); and
13. why it is not practical to collect the personal information directly from the individual.

What to Expect Once Your Submission is Received by the OIPC

When an application under section 62(1)(a)(ii) is received, the OIPC will send the public body an acknowledgement and commence analysis of the submission. In some cases, the OIPC may follow up with public bodies seeking clarification or additional information.

Based on experience in other jurisdictions, it may take anywhere from a few weeks to a few months for the OIPC to complete a review of an application, depending if the OIPC has processed a similar request in the past and is able to leverage that knowledge. A robust submission to the OIPC may result in a quicker review period, as there may be fewer follow-up questions posed. If timelines are tight, the public body should consider involving the OIPC early in the process, making it familiar with the project, to assist in speed of the review process.

Even if the OIPC authorizes the collection, there may be specific terms and conditions that apply. For example, the OIPC may require that a Privacy Impact Assessment be conducted within a year of approval. Also, the OIPC may make public details of approved indirect collections, such as summary reports that provide background information, reasons for approving the authorization and an explanation of what has been authorized.

Resource

The Office of the Information and Privacy Commissioner of Ontario's Indirect Collection Guidelines – Provincial (<https://www.ipc.on.ca/English/Resources/Discussion-Papers/Discussion-Papers-Summary/?id=393>)

This document is based on similar guidance developed by the Office of the Information and Privacy Commissioner in the provinces of Ontario and British Columbia.