

PIPA CONFERENCE 2006: “Customers, Employees and Privacy”

Session A2: Pre-employment Screening/Privacy Considerations in the Hiring Process

April 26, 2006

The following table compares selected provisions of Alberta’s *Personal Information Protection Act* and British Columbia’s *Personal Information Protection Act* relating to personal information of employees. (The official versions of the Acts and Regulations should be consulted for the exact wording and for all purposes of interpreting and applying the legislation.)

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Definitions	
<p>1 In this Act,</p> <p>(a) “business contact information” means an individual’s name, position name or title, business telephone number, business address, business e-mail, business fax number and other similar business information;</p>	<p>1 In this Act:</p> <p>“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 business fax number of the individual;</p>
<p>(e) “employee” means an individual employed by an organization and includes an individual who performs a service for or in relation to or in connection with an organization</p> <p>(i) as an apprentice, volunteer, participant or student, or</p> <p>(ii) under a contract or an agency relationship with the organization;</p>	<p>“employee” includes a volunteer;</p>
	<p>“employment” includes working under an unpaid volunteer work relationship;</p>
<p>(j) “personal employee information” means, in respect of an employee who is an employee or a potential employee, personal information reasonably required by an organization that is collected, used or disclosed solely for the purposes of establishing, managing or terminating</p> <p>(i) an employment relationship, or</p> <p>(ii) a volunteer work relationship between the organization and the individual but does not include personal information about the individual that is unrelated to that relationship;</p> <p><i>[see PIPA Regulation section 3: For the purposes of section 1(j) of the Act, “managing” includes administering.]</i></p>	<p>“employee personal information” means 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;</p>
<p>(k) “personal information” means information about an identifiable individual;</p>	<p>“personal information” means information about an identifiable individual and includes employee personal information but does not include</p> <p>(a) contact information, or</p> <p>(b) work product information;</p>

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<p>(n) “volunteer work relationship” means a relationship between an organization and an individual under which a service is provided for or in relation to or is undertaken in connection with the organization by the individual where the individual is acting as a volunteer or is otherwise unpaid with respect to that service and includes any similar relationship involving an organization and an individual where, in respect of that relationship, the individual is a participant or a student.</p>	<p><i>[definition of “employment” refers to but does not define “volunteer work relationship”]</i></p>
	<p>“work product information” means information prepared or collected by an individual or group of individuals as a part of the individual's or group's responsibilities or activities related to the individual's or group's employment or business but does not include personal information about an individual who did not prepare or collect the personal information.</p>
Reasonableness standard	
<p>2 Where in this Act anything or any matter (a) is described, characterized or referred to as reasonable or unreasonable, or (b) is required or directed to be carried out or otherwise dealt with reasonably or in a reasonable manner, the standard to be applied under this Act in determining whether the thing or matter is reasonable or unreasonable, or has been carried out or otherwise dealt with reasonably or in a reasonable manner, is what a reasonable person would consider appropriate in the circumstances.</p>	<p>4(1) In meeting its responsibilities under this Act, an organization must consider what a reasonable person would consider appropriate in the circumstances.</p>
Application	
<p>4(3) This Act does not apply to the following... (d) the collection, use or disclosure of business contact information if the collection, use or disclosure, as the case may be, is for the purposes of contacting an individual in that individual's capacity as an employee or an official of an organization and for no other purpose.</p>	<p><i>[see section 1 definitions: “personal information” ...does not include (a) contact information ...]</i></p>
Limitations on collection	
<p>11(1) An organization may collect personal information only for purposes that are reasonable. (2) Where an organization collects personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is collected.</p>	<p>11 Subject to this Act, an organization may collect personal information only for purposes that a reasonable person would consider appropriate in the circumstances and that (a) fulfill the purposes that the organization discloses under section 10(1), or (b) are otherwise permitted under this Act.</p>
Collection of personal employee information	
<p>15(1) Notwithstanding anything in this Act other than subsection (2), an organization may collect personal employee information about an individual without the consent of the individual if (a) the individual is an employee of the organization, or (b) the collection of the information is for the purpose of recruiting a potential employee.</p>	<p>13(1) Subject to subsection (2), an organization may collect employee personal information without the consent of the individual.</p>

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<p>15(2) An organization shall not collect personal information about an individual under subsection (1) without the consent of the individual unless</p> <p>(a) the collection is reasonable for the purposes for which the information is being collected,</p> <p>(b) the information consists only of information that is related to the employment or volunteer work relationship of the individual, and ...</p>	<p>13(2) An organization may not collect employee personal information without the consent of the individual unless</p> <p>(a) section 12 allows the collection of the employee personal information without consent, or</p> <p>(b) the collection is reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual.</p>
<p>(c) in the case of an individual who is an employee of the organization, the organization has, before collecting the information, provided the individual with reasonable notification that the information is going to be collected and of the purpose for which the information is going to be collected.</p>	<p>13(3) An organization must notify an individual that it will be collecting employee personal information about the individual and the purposes for the collection before the organization collects the employee personal information without the consent of the individual.</p>
<p>15(3) An organization may disclose personal employee information about an individual without the consent of the individual where that information is being disclosed to an organization that is collecting that information under subsection (1).</p>	
<p>15(4) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to collect personal information under section 14.</p> <p><i>[section 14 sets out the circumstances in which any individual's personal information may be collected without consent]</i></p>	<p>13(4) Subsection (3) does not apply to employee personal information if section 12 allows it to be collected without the consent of the individual.</p> <p><i>[section 12 sets out the circumstances in which any individual's personal information may be collected without consent]</i></p>
Limitations on use	
<p>16(1) An organization may use personal information only for purposes that are reasonable.</p> <p>(2) Where an organization uses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is used.</p>	<p>14 Subject to this Act, an organization may use personal information only for purposes that a reasonable person would consider appropriate in the circumstances and that</p> <p>(a) fulfill the purposes that the organization discloses under section 10 (1),</p> <p>(b) for information collected before this Act comes into force, fulfill the purposes for which it was collected, or</p> <p>(c) are otherwise permitted under this Act.</p>
Use of personal employee information	Use of employee personal information
<p>18(1) Notwithstanding anything in this Act other than subsection (2), an organization may use personal employee information about an individual without the consent of the individual if</p> <p>(a) the individual is an employee of the organization, or</p> <p>(b) the use of the information is for the purpose of recruiting a potential employee.</p>	<p>16(1) Subject to subsection (2), an organization may use employee personal information without the consent of the individual.</p>
<p>18(2) An organization shall not use personal information about an individual under subsection (1) without the consent of the individual unless</p> <p>(a) the use is reasonable for the purposes for which the information is being used,</p> <p>(b) the information consists only of information that is related to the employment or volunteer work relationship of the individual, and ...</p>	<p>16(2) An organization may not use employee personal information without the consent of the individual unless</p> <p>(a) section 15 allows the use of the employee personal information without consent, or</p> <p>(b) the use is reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual.</p>

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<p>(c) in the case of an individual who is an employee of the organization, the organization has, before using the information, provided the individual with reasonable notification that the information is going to be used and of the purposes for which the information is going to be used.</p>	<p>16(3) An organization must notify an individual that it will be using employee personal information about the individual and the purposes for the use before the organization uses the employee personal information without the consent of the individual.</p>
<p>18(3) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to use personal information under section 17.</p> <p><i>[section 17 sets out the circumstances in which any individual's personal information may be used without consent]</i></p>	<p>16(4) Subsection (3) does not apply to employee personal information if section 15 allows it to be used without the consent of the individual.</p> <p><i>[section 15 sets out the circumstances in which any individual's personal information may be used without consent]</i></p>
<p>Limitations on disclosure</p>	
<p>19(1) An organization may disclose personal information only for purposes that are reasonable.</p> <p>(2) Where an organization discloses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is disclosed.</p>	<p>17 Subject to this Act, an organization may disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances and that</p> <p>(a) fulfill the purposes that the organization discloses under section 10 (1),</p> <p>(b) for information collected before this Act comes into force, fulfill the purposes for which it was collected, or</p> <p>(c) are otherwise permitted under this Act.</p>
<p>Disclosure of personal employee information</p>	<p>Disclosure of employee personal information</p>
<p>21(1) Notwithstanding anything in this Act other than subsection (2), an organization may disclose personal employee information about an individual without the consent of the individual if</p> <p>(a) the individual is or was an employee of the organization, or</p> <p>(b) the disclosure of the information is for the purpose of recruiting a potential employee.</p>	<p>19(1) Subject to subsection (2), an organization may disclose employee personal information without the consent of the individual.</p>
<p>21(2) An organization shall not disclose personal information about an individual under subsection (1) without the consent of the individual unless</p> <p>(a) the disclosure is reasonable for the purposes for which it is being disclosed,</p> <p>(b) the information consists only of information that is related to the employment or volunteer work relationship of the individual, and ...</p>	<p>19(2) An organization may not disclose employee personal information without the consent of the individual unless</p> <p>(a) section 18 allows the disclosure of the employee personal information without consent, or</p> <p>(b) the disclosure is reasonable for the purposes of establishing, managing or terminating an employment relationship between the organization and the individual.</p>
<p>(c) in the case of an individual who is an employee of the organization, the organization has, before disclosing the information, provided the individual with reasonable notification that the information is going to be disclosed and of the purposes for which the information is going to be disclosed.</p>	<p>19(3) An organization must notify an individual that it will be disclosing employee personal information about the individual and the purposes for the disclosure before the organization discloses employee personal information about the individual without the consent of the individual.</p>
<p>21(3) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to disclose personal information under section 20.</p> <p><i>[section 20 sets out the circumstances in which any individual's personal information may be disclosed without consent]</i></p>	<p>19(4) Subsection (3) does not apply to employee personal information if section 18 allows it to be disclosed without the consent of the individual.</p> <p><i>[section 18 sets out the circumstances in which any individual's personal information may be disclosed without consent]</i></p>

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Disclosure respecting acquisition of a business etc.	
<p>22(1) In this section, (a) "business transaction" means a transaction consisting of the purchase, sale, lease, merger or amalgamation or any other type of acquisition or disposal of, or the taking of a security interest in respect of, an organization or of a portion of an organization or of any business or activity or business asset of an organization and includes a prospective transaction of such a nature;</p>	<p>20(1) In this section: "business transaction" means the purchase, sale, lease, merger or amalgamation or any other type of acquisition, disposal or financing of an organization or a portion of an organization or of any of the business or assets of an organization;</p>
<p>22(1)(b) "party" includes a prospective party.</p>	<p>20(1) "party" means a person or another organization that proceeds with the business transaction.</p>
<p>22(2) Notwithstanding anything in this Act other than this section, an organization may, for the purposes of a business transaction between itself and one or more other organizations, collect, use and disclose personal information in accordance with this section.</p>	<p>20(4) A prospective party may collect and use personal information without the consent of the employees, customers, directors, officers and shareholders of the organization in the circumstances described in subsection (2) if the prospective party complies with the conditions applicable to that prospective party under that subsection. (5) A party may collect, use and disclose personal information without the consent of the employees, customers, directors, officers and shareholders of the organization in the circumstances described in subsection (3) if the party complies with the conditions applicable to that party under that subsection.</p>
<p>22(3) Organizations that are parties to a business transaction may, (a) during the period leading up to and including the completion, if any, of the business transaction, collect, use and disclose personal information about individuals without the consent of the individuals if (i) the parties have entered into an agreement under which the collection, use and disclosure of the information is restricted to those purposes that relate to the business transaction, and (ii) the information is necessary (A) for the parties to determine whether to proceed with the business transaction, and (B) if the determination is to proceed with the business transaction, for the parties to carry out and complete the business transaction, and</p>	<p>20(2) An organization may disclose personal information about its employees, customers, directors, officers or shareholders without their consent, to a prospective party, if (a) the personal information is necessary for the prospective party to determine whether to proceed with the business transaction, and (b) the organization and prospective party have entered into an agreement that requires the prospective party to use or disclose the personal information solely for purposes related to the prospective business transaction.</p>
<p>22(3)(b) where the business transaction is completed, collect, use and disclose personal information about individuals without the consent of the individuals if (i) the parties have entered into an agreement under which the parties undertake to use and disclose the information only for those purposes for which the information was initially collected from or in respect of the individuals, and (ii) the information relates solely to the carrying on of the business or activity or the carrying out of the objects for which the business transaction took place.</p>	<p>20(3) If an organization proceeds with a business transaction, the organization may disclose, without consent, personal information of employees, customers, directors, officers and shareholders of the organization to a party on condition that (a) the party must only use or disclose the personal information for the same purposes for which it was collected, used or disclosed by the organization, (b) the disclosure is only of personal information that relates directly to the part of the organization or its business assets that is covered by the business transaction, and (c) the employees, customers, directors, officers and shareholders whose personal information is disclosed are notified that (i) the business transaction has taken place, and (ii) the personal information about them has been disclosed to the party.</p>

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22(4) If a business transaction does not proceed or is not completed, the party to whom the personal information was disclosed must, if the information is still in the custody of or under the control of that party, either destroy the information or turn it over to the party that had disclosed the information.	20(6) If a business transaction does not proceed or is not completed, a prospective party must destroy or return to the organization any personal information the prospective party collected under subsection (2) about the employees, customers, directors, officers and shareholders of the organization.
22(5) Nothing in this section is to be construed so as to restrict a party to a business transaction from obtaining consent of an individual to the collection, use or disclosure of personal information about the individual for purposes that are beyond the purposes for which the party obtained the information under this section.	
22(6) This section does not apply to a business transaction where the primary purpose, objective or result of the transaction is the purchase, sale, lease, transfer, disposal or disclosure of personal information.	20(7) This section does not authorize an organization to disclose personal information to a party or prospective party for purposes of a business transaction that does not involve substantial assets of the organization other than this personal information.
	20(8) A party or prospective party is not authorized by this section to collect, use or disclose personal information that an organization disclosed to it in contravention of subsection (7).
Access to personal information	
23 In this Division, (b) “organization” does not include any person acting on behalf of an organization.	
24(1) Subject to subsections (2) to (4), on the request of an individual for access to personal information about the individual and taking into consideration what is reasonable, an organization must provide the individual with access to the following: (a) the individual’s personal information where that information is contained in a record that is in the custody or under the control of the organization; (b) the purposes for which the personal information referred to in clause (a) has been and is being used by the organization; (c) the names of the persons to whom and circumstances in which the personal information referred to in clause (a) has been and is being disclosed.	23(1) Subject to subsections (2) to (5), on request of an individual, an organization must provide the individual with the following: (a) the individual’s personal information under the control of the organization; (b) information about the ways in which the personal information referred to in paragraph (a) has been and is being used by the organization; (c) the names of the individuals and organizations to whom the personal information referred to in paragraph (a) has been disclosed by the organization.
24(2) An organization may refuse to provide access to personal information under subsection (1) if (a) the information is protected by any legal privilege;	23(3) An organization is not required to disclose personal information and other information under subsection (1) or (2) in the following circumstances: (a) the information is protected by solicitor-client privilege;
24(2)(b) the disclosure of the information would reveal confidential information that is of a commercial nature and it is not unreasonable to withhold that information;	23(3)(b) the disclosure of the information would reveal confidential commercial information that if disclosed, could, in the opinion of a reasonable person, harm the competitive position of the organization;
24(2)(c) the information was collected for an investigation or legal proceeding;	23(3)(c) the information was collected or disclosed without consent, as allowed under section 12 or 18, for the purposes of an investigation and the investigation and associated proceedings and appeals have not been completed;

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24(2)(d) the disclosure of the information might result in that type of information no longer being provided to the organization when it is reasonable that that type of information would be provided;	
24(2)(e) the information was collected by a mediator or arbitrator or was created in the conduct of a mediation or arbitration for which the mediator or arbitrator was appointed to act (i) under an agreement, (ii) under an enactment, or (iii) by a court; <i>[see also PIPA Regulation section 4(2)]</i>	23(3)(e) the information was collected or created by a mediator or arbitrator in the conduct of a mediation or arbitration for which he or she was appointed to act (i) under a collective agreement, (ii) under an enactment, or (iii) by a court.
24(2)(f) the information relates to or may be used in the exercise of prosecutorial discretion.	
	23(3.1) A credit reporting agency is not required to disclose the names of the individuals and organizations to whom the personal information was last disclosed by the agency in a credit report more than 12 months before the request under subsection (1) was made.
24(3) An organization shall not provide access to personal information under subsection (1) if (a) the disclosure of the information could reasonably be expected to threaten the life or security of another individual;	23(4) An organization must not disclose personal information and other information under subsection (1) or (2) in the following circumstances: (a) the disclosure could reasonably be expected to threaten the safety or physical or mental health of an individual other than the individual who made the request;
	23(4)(b) the disclosure can reasonably be expected to cause immediate or grave harm to the safety or to the physical or mental health of the individual who made the request; <i>[see also BC PIPA Regulations section 5]</i>
24(3)(b) the information would reveal personal information about another individual;	23(4)(c) the disclosure would reveal personal information about another individual;
24(3)(c) the information would reveal the identity of an individual who has in confidence provided an opinion about another individual and the individual providing the opinion does not consent to disclosure of his or her identity.	23(4)(d) the disclosure would 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.
24(4) If, in respect of a record, an organization is reasonably able to sever the information referred to in subsection (2)(b) or (3)(a), (b) or (c) from a copy of the record that contains personal information about the individual who requested it, the organization must provide the individual with access to the record after the information referred to in subsection (2)(b) or (3)(a), (b) or (c) has been severed.	23(5) If an organization is able to remove the information referred to in subsection (3) (a), (b) or (c) or (4) from a document that contains personal information about the individual who requested it, the organization must provide the individual with access to the personal information after the information referred to in subsection (3) (a), (b) or (c) or (4) is removed.
Right to request correction	
25(1) An individual may request an organization to correct an error or omission in the personal information about the individual that is under the control of the organization.	24 (1) An individual may request an organization to correct an error or omission in the personal information that is (a) about the individual, and (b) under the control of the organization.

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<p>25(2) If there is an error or omission in personal information in respect of which a request for a correction is received by an organization under subsection (1), the organization must, subject to subsection (3),</p> <p>(a) correct the information as soon as reasonably possible, and</p> <p>(b) where the organization has disclosed the incorrect information to other organizations, send a notification containing the corrected information to each organization to which the incorrect information has been disclosed, if it is reasonable to do so.</p>	<p>24(2) If an organization is satisfied on reasonable grounds that a request made under subsection (1) should be implemented, the organization must</p> <p>(a) correct the personal information as soon as reasonably possible, and</p> <p>(b) send the corrected personal information to each organization to which the personal information was disclosed by the organization during the year before the date the correction was made.</p>
<p>25(3) If an organization makes a determination not to make the correction under subsection (2)(a), the organization must annotate the personal information under its control with the correction that was requested but not made.</p>	<p>24(3) If no correction is made under subsection (2), the organization must annotate the personal information under its control with the correction that was requested but not made.</p>
<p>25(4) On receiving a notification under subsection (2)(b) containing corrected personal information, an organization must correct the personal information in its custody or under its control.</p>	<p>24(4) When an organization is notified under subsection (2) of a correction of personal information, the organization must correct the personal information under its control.</p>
<p>25(5) Notwithstanding anything in this section, an organization shall not correct or otherwise alter an opinion, including a professional or expert opinion.</p>	
Accuracy of information	
<p>33 An organization must make a reasonable effort to ensure that any personal information collected, used or disclosed by or on behalf of an organization is accurate and complete.</p>	<p>33 An organization must make a reasonable effort to ensure that personal information collected by or on behalf of the organization is accurate and complete, if the personal information</p> <p>(a) is likely to be used by the organization to make a decision that affects the individual to whom the personal information relates, or</p> <p>(b) is likely to be disclosed by the organization to another organization.</p>
Protection of information	
<p>34 An organization must protect personal information that is in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction.</p>	<p>34 An organization must 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.</p>
Retention of information	
	<p>35(1) Despite subsection (2), if an organization uses an individual's personal information to make a decision that directly affects the individual, the organization must retain that information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it.</p>
<p>35 Notwithstanding that a consent has been withdrawn or varied under section 9, an organization may for legal or business purposes retain personal information as long as is reasonable.</p>	<p>35(2) An organization must destroy its documents containing personal information, or remove the means by which the personal information can be associated with particular individuals, as soon as it is reasonable to assume that</p> <p>(a) the purpose for which that personal information was collected is no longer being served by retention of the personal information, and</p> <p>(b) retention is no longer necessary for legal or business purposes.</p>

