

Breakout Session 4A: Employee Requests to Access Their Personnel Files – Access or Denial?

A key privacy principle is that current and former employees have the right to access their own personal information in the custody or control of their employer. How does this play out when an employee is under investigation, or is the subject or complainant in a harassment investigation, is suing you or is on the verge of termination? What are the employee's rights and obligations with respect to an access request made by an employee or a former employee?

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Session Outline

- Introduction and overview of the legislation
- Handling requests for access from employees – routine and “formal” requests under legislation
- Considerations in special cases
- Applying exceptions to disclosure.
- Evaluating requests from a third party claiming to act on behalf of an employee
- Assessing whether a request is frivolous or vexatious?

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AB PIPA	BC PIPA	PIPEDA
Key definitions		
“Employee” includes a person employed by an organization, and an apprentice, participant, volunteer, or student.	Employee includes a volunteer.	Employee is not defined.
“Personal information” means information about an identifiable individual.	“Personal information” means information about an identifiable individual and includes employee information but does not include contact information or work product information.	“Personal information” means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.
No such concept.	“Work product” information means information prepared or collected by an individual or group of individuals as a part of their responsibilities/activities related to their employment or business but does not include personal information about an individual who did not prepare or collect the personal information.	No such concept.
“Business contact information” means an individual’s name, position name/title, business telephone number, address, business, and fax number and other similar business information. [Note: The Act does not apply to the collection, use or disclosure of business contact information for the purposes of contacting an individual in his/her capacity as an employee/official of the organization and for no other purpose.]	“Contact information” means information to enable an individual at a place of business to be contacted and includes the name, position name/title, business phone number, address, email or fax number of the individual.	
“Personal employee information” includes personal information collected, used or disclosed solely for the purpose of establishing, managing, administering or terminating the employment or volunteer relationship. It applies to prospective and current employees of the organization.	“Employee personal information” includes personal information that is collected, used or disclosed solely for the purpose of establishing, managing or terminating the employment relationship. It applies to	No such concept.
Access requests		
An individual may make a written request for access to personal information contained in a records under the custody or control of the organization.	An individual may make a request for access for personal information under the control of the organization.	An individual may make a request for access to personal information.

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Processing times		
45 calendar days	30 working days	30 calendar days
Fees		
May charge an applicant a reasonable fee, but may not charge a current employee a fee for a request for personal employee information.	May charge an applicant a minimal fee, but may not charge a fee for access to employee personal information.	May charge an applicant a minimal fee or provide at no cost.
Exceptions to disclosure in response to an access request		
<p>An organization may refuse access if:</p> <ul style="list-style-type: none"> ▪ the information is protected by legal privilege or relates to prosecutorial privilege ▪ when disclosure would give away confidential business information and it is not unreasonable to hold back the information ▪ the information was collected for an investigation or legal proceeding ▪ the disclosure might result in that type of information not longer being supplied and it is reasonable to continue to receive it ▪ the information was collected by a mediator or arbitrator in certain circumstances 	<p>An organization is not required to disclose information if:</p> <ul style="list-style-type: none"> ▪ the information is protected by solicitor-client privilege or is subject to a solicitor’s lien ▪ when disclosure would give away confidential business information that could harm the competitive position of the organization ▪ the information was collected or disclosed for purposes of an investigation and the investigation and any appeals are not completed ▪ the information was collected by a mediator or arbitrator in certain circumstances 	<p>An organization is not required to disclose information if:</p> <ul style="list-style-type: none"> ▪ the information is protected by solicitor-client privilege ▪ when disclosure would give away confidential business information ▪ when information was collected without consent as otherwise the availability or accuracy would be compromised – related to an investigation ▪ the information was generated in the course of a formal dispute resolution process
<p>An organization must refuse access if:</p> <ul style="list-style-type: none"> ▪ disclosing the information would threaten the life or security of another individual ▪ the information would reveal personal information of another individual ▪ would identify the individual who give you an opinion about the applicant and that individual does not consent to the disclosure <p>This information should severed from the record and the remainder provided to the applicant.</p>	<p>An organization must refuse access if:</p> <ul style="list-style-type: none"> ▪ disclosing the information would threaten the safety, or physical or mental health of another individual ▪ the information would reveal personal information of another individual ▪ would identify the individual who give you an opinion about the applicant and that individual does not consent to the disclosure <p>This information should severed from the record and the remainder provided to the applicant.</p>	<p>An organization must refuse access if:</p> <ul style="list-style-type: none"> ▪ disclosing the information would threaten the life or security of another individual ▪ the information would reveal personal information of another individual – but can be released with consent or if the individual needs it because an individual’s life, health or security is threatened. <p>This information should severed from the record and the remainder provided to the applicant.</p>

Note: This table paraphrases the legislation. Please refer to the legislation for the actual wording.

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Resources related to processing access requests

Alberta PIPA	
<p>Government web site: www.pipa.gov.ab.ca</p> <p>A Guide for Business and Organizations on the Personal Information Protection Act</p> <p>Information Sheet 5: Personal Employee Information</p> <p>Information Sheet 7: Personal Information of Deceased Individuals</p> <p>Setting Up a Complaint Handling Process</p>	<p>Office of the Information and Privacy Commissioner's web site: www.oipc.ab.ca</p> <p>PIPA Advisory 2: Access Requests – An Overview</p> <p>PIPA Advisory 3: Access Requests – Responding to a Request</p> <p>PIPA Advisory 4: Requests for Correction of Personal Information</p> <p>PIPA Advisory 5: Access Requests – Fees</p> <p>PIPA Advisory 6: Access Requests – Time Limits</p> <p>PIPA Advisory 7: Access Requests – Exceptions to Access</p>
BC PIPA	
<p>Government web site: www.msar.gov.bc.ca/privacyaccess/</p> <p>Setting Up a Complaint Handling Process</p>	<p>Office of the Information and Privacy Commissioner's web site: www.oipc.bc.ca</p> <p>PIPA and the Hiring Process</p> <p>A Guide for Organizations and Businesses to BC's PIPA</p>
PIPEDA	
<p>Government web site: http://e-com.ic.gc.ca/epic/site/ecic-ceac.nsf/en/h_gv00045e.html</p> <p>A Guide for Businesses and Organizations</p>	<p>Privacy Commissioner of Canada's web site: www.privcom.gc.ca</p> <p>Your Privacy Responsibilities: A Guide for Businesses and Organizations</p> <p>Fact Sheet: Determining the appropriate form of consent under PIPEDA</p> <p>Fact Sheet: Application of PIPEDA to Employee Records</p> <p>Fact Sheet: Privacy in the Workplace</p>

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Key findings and cases related to processing access requests

PIPEDA
Selected Case Summaries: #37: Airport management cites solicitor-client privilege to withhold employee's information #50: Bank accused of withholding information on former employee's dismissal #84: Bank cites exemption to deny former employee access to personal information #88: Former telco employee denied access to certain employment file information #103: Railway employee denied access to letter in employment file #147: Railway company withholds employee's personal information. #179: Trucking company accused of refusing former employee's access request #284: Use and disclosure of health information considered appropriate, but access request was mishandled #285: Company refuses former employee's request for access #330: Assistant Commissioner considers the nature of certain dispute resolution processes in denial of access complaint
BC PIPA
P07-09-MS Employer ignores former worker's request for record of hours worked P07-03-MS Fired employee not entitled to investigation materials
Alberta PIPA
P0197 Commissioner authorizes an organization under PIPA to disregard an access request.