

**GUIDING PRINCIPLES
PRIVACY & INFORMATION SHARING IN
CASES OF SEXUAL ABUSE & ASSAULT**

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A. Purpose

Appropriately managing personal information across sectors is a key component of collaboration. In the context of sexual abuse and assault, practitioners encounter a complex array of privacy laws. This document is meant to be used primarily by first responders from the justice, health and child protection sectors to help navigate complex questions related to privacy, information sharing and risk management, particularly in an interagency context. Included here is information on privacy laws, information sharing practices and some guiding principles. These are meant to ensure that local information sharing practices:

- help maximize safety for women and children
- are consistent with federal and provincial privacy laws.

The Guiding principles can be adapted to form part of a local protocol to enhance coordinated responses to sexual abuse and assault.

Be aware that protocol partners may be subject to different privacy laws than your own agency or program. Most community-based antiviolence programs are governed by the *Personal Information Protection Act*. System-based responders, such as government ministries will be governed by the *Freedom of Information and Protection of Privacy Act*. RCMP come under the federal *Privacy Act*.

The findings of the Truth and Reconciliation Report represent a watershed in the relationship between Indigenous and non-Indigenous people in Canada. This historical moment represents an opportunity to acknowledge and begin to address the tragic legacy of colonialism and residential schools. Our justice system, based primarily on the British model, has until recently largely disregarded the presence of pre-existing Indigenous frameworks and cultural practices. Given this history, it is critical that when working with Indigenous communities, information sharing practices be handled in a culturally sensitive manner.

BC's population is diverse and the cultural mix in our province continues to evolve as new immigrants and refugees join our communities. Ideally, interagency work will be informed by regard for distinct cultures and an awareness of the critical role cultural factors can play in risk management.

B. Overview: Life Trumps Privacy

In cases flagged as potentially high risk, it may be necessary to pro-actively share key details of the case to keep the survivor/victim, their children, or other involved people safe. Subject to certain limited exceptions, personal information regarding a victim, alleged perpetrator, or involved family members must not be used or disclosed for purposes other than those identified upon collection unless the person consents to the new use or the disclosure is authorized by law. The federal *Privacy Act* and the provincial *Freedom of Information and Protection of Privacy Act* also permit disclosure of the information for a purpose consistent with the original purpose of collection.

Commentary regarding privacy legislation has stated that the threat to life trumps privacy. While privacy laws limit situations in which someone's personal information can be disclosed, they also allow personal information to be disclosed in the public interest (*Privacy Act*), or where compelling circumstances exist that affect anyone's health or safety (*Freedom of Information & Protection of Privacy Act & Personal Information Protection Act*). The *Freedom of Information & Protection of Privacy Act* also specifically permits the release of personal information for the purpose of reducing the risk of domestic violence if domestic violence is reasonably likely to occur. This Act also **requires** public disclosure of information about a risk of significant harm to the health or safety of the public or a group of people. The *Child Family and Community Service Act* requires anyone who has reason to believe that a child needs protection to report to child welfare authorities. This Act also allows for disclosure of information obtained under the Act if the disclosure is necessary to ensure a child's safety and wellbeing or to ensure the safety of a person other than a child

First responders should familiarize themselves with risk factors associated with an increased chance of further violence in sexual abuse and assault cases. *All* responders, whether they are based in systems or in the community, must make themselves aware of the safety implications of certain risk factors and use validated approaches to analyze risk. The presence of certain risk factors will result in a more pro-active approach to information sharing and risk management in a particular case.

C. The Legal Framework

1. Privacy Legislation

Protocol partners should determine which privacy law applies to their program or agency.

Applicable laws include the following:

- Federal *Privacy Act* (for federal government entities such as RCMP and Federal Parole)
- BC *Freedom of Information and Protection of Privacy Act (FIPPA)* (for public bodies such as Municipal Police, Community Corrections, Health Authorities, provincial ministries, public education bodies, local governments and contracted service providers performing services for a public body)
- BC *Personal Information Protection Act (PIPA)* (for not-for-profit organizations such as Community-Based Victim Service programs, other anti-violence programs such as Stopping the Violence Counselling and Outreach programs, Transition Houses, and Children Who Witness Abuse programs,¹ and organizations such as unincorporated associations, trade unions, and charities)
- BC *Child, Family and Community Service Act (CFCSA)*. This Act includes the legal requirement for anyone who has concerns about a child's safety and wellbeing to promptly report their concerns to a child welfare protection worker. In addition, the *CFCSA* outlines privacy provisions under which the Ministry of Children and Family Development may share information with or without consent.

These are the main privacy laws that apply, however other specific laws may also be relevant such as: the *Criminal Code*; the *Gunshot and Stab Wound Disclosure Act*; the *Police Act*; the *Access to Information Act*; the *Canadian Victims Bill of Rights*; the *Family Law Act*; the *Public Health Act*; the *Health Act*, *Ministry of Health Act*, *Hospital Insurance Act*, the *Coroner's Act* and regarding the disclosure of youth records, the *Youth Criminal Justice Act*.

Any legislation cited here is subject to periodic amendment. Amendments can be checked by accessing the BC Laws website at: <http://www.bclaws.ca>

2. Consent Requirements

If possible and if it is safe to do so, every effort should be made to obtain written or verbal consent from the victim before disclosing personal information to third party agencies or programs or protocol partners.

¹ Whether or not a community-based program is covered by FIPPA or PIPA depends upon the wording of the contract the program has with the funding ministry. If the contract wording suggests that program records are under the agency's or program's custody or control, then PIPA rules apply. For more information on factors affecting who has custody or control see: Ruebsaat (2006)

Although obtaining consent from the individual is the best practice, it may not be possible in all cases and federal and provincial laws do allow for the disclosure of personal information without consent in certain circumstances as discussed below. Most of these circumstances allow for information sharing in order to reduce the risk of harm.

3. Information Sharing if You are Part of a Federal Agency Such as RCMP or Federal Parole

If the individual consents to the release of their personal information, the federal *Privacy Act* authorizes disclosure to third party agencies or programs or protocol partners.

If **no consent** is given, the *Privacy Act* still allows personal information to be disclosed without consent in certain situations including, but not limited to, the following:

- a) For the purpose for which the personal information was obtained or compiled or for a use consistent with that purpose. **Section 8(2)(a)**
- b) Under an agreement or arrangement between the Government of Canada or an institution thereof and the government of a province... or any institution of such government, for the purpose of administering or enforcing any law or carrying out a lawful investigation. Section 8(2)(f) works in conjunction with the 1983 Canada-British Columbia Agreement on Disclosure of Personal Information. **Section 8(2)(f)**
- c) Where in the opinion of the head of the institution, the public interest in disclosure clearly outweighs any invasion of privacy that would result from disclosure or disclosure would clearly benefit the individual to whom the information relates. **Section 8(2)(m)(i) and (ii)²**

² Section 8(5) of the *Privacy Act* requires that if personal information is disclosed under section 8(2)(m), the head of the government institution must notify the federal Privacy Commissioner prior to any disclosure where reasonably practicable or in any other case forthwith on the disclosure. In urgent cases where this subsection is being used, the federal institution can release the information and notify the federal Privacy Commissioner as soon as possible after the release.

4. Information Sharing if You are Part of a Provincial Public Body such as Municipal Police, Community Corrections or Mental Health

If the individual **has given consent**, *FIPPA* at section 33.1(1)(b) authorizes disclosure inside or outside Canada.

If the individual **has not given consent**, *FIPPA* at section 33.1 authorizes disclosure:³

- a) If the head of the public body determines that compelling circumstances exist that affect anyone's health or safety, and notice of disclosure is mailed to the last known address of the individual the information is about, unless the head of the public body considers that giving this notice could harm someone's health or safety. **Section 33.1(1)(m)(i) and (ii)**. Compelling circumstances exist where there is a necessity to act to avert imminent danger to someone's health or safety or to protect someone's health or safety.
- b) For the purpose of reducing the risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur. **Section 33.1(1)(m.1)**
- c) For the purpose for which it was obtained or for a use consistent with that purpose. **Section 33.2(a)**
- d) To an officer or employee of a public body or to a minister if the information is necessary for the performance of their duties. **Section 33.2(c)**
- e) To an officer or employee of a public body or agency ... if the information is necessary for the delivery of a common integrated program or activity. **Section 33.2(d)**
- f) To a public body or a law enforcement agency in Canada to assist in an investigation with a view towards a law enforcement proceeding or from which a law enforcement proceeding is likely to result. **Section 33.2(i)**

Provincial public bodies should also be aware that *FIPPA* requires public disclosure of information about a risk of significant harm to the health or safety of the public or a group of people. This provision applies whether or not consent to disclosure is given. **Section 25**

³ Assuming that all disclosures occur inside Canada, *FIPPA* authorizes disclosure in the circumstances listed.

5. Information Sharing if You are Part of a Non-Profit Organization

If the individual has given **consent**, *PIPA*⁴ sections 7 and 8 authorize disclosure.

If the individual has **not given consent**, *PIPA* authorizes disclosure in the following circumstances:

- a) The disclosure is in the interests of the individual and consent cannot be obtained in a timely way. **Section 18(1)(a)**
- b) The disclosure with consent would compromise an investigation or proceeding and disclosure is reasonable. **Section 18(1)(c)**
- c) The disclosure is to a public body or law enforcement agency in Canada to assist in an investigation or in the making of a decision to undertake an investigation. **Section 18(1)(j)**
- d) There are reasonable grounds to believe that compelling circumstances exist that affect the health or safety of any individual and notice is sent to the last known address of the individual to whom the personal information relates. **Section 18(1)(k)**

Also, *PIPA* allows an organization to disclose personal information to another organization **without consent** if the individual consented to the original collection and the personal information is disclosed to the other organization solely for the purposes for which the information was originally collected; and to assist the other organization to carry out work on behalf of the first organization. **Section 18(2)**

⁴ In light of the Supreme Court of Canada ruling related to union picketing activity: *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, 2013 S.C.C. 62, BC's *PIPA* is currently under legislative review and certain amendments are pending.

6. Information Sharing if You are a Child Protection Social Worker

The *CFCSA* is the legislation that applies to the social workers in the Ministry for Children and Family Development (MCFD) and Delegated Aboriginal Agencies (DAA's) who provide child protection services.

Obtaining information **without consent**:

- The director has the right to any information held by a public body in order to ensure the safety and well-being of a child. **Section 96**

Disclosing information **without consent**:

- The director may, without consent, disclose any information if the disclosure is necessary to ensure the safety or wellbeing of a child or the safety of a person. **Section 79(a) and (a.1)** This section overrides privacy provisions in *FIPPA*.
- The director may disclose personal information for the purpose of reducing risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur. **Section 74(2)(e)(iv)**

Sections 74 to 79 of the *CFCSA* apply despite *FIPPA*.

D. Guiding Principles

- 1. Determine whether risk indicators for further violence are present suggesting that the survivor/victim, her children or anyone else may be at risk of harm. If you have reason to believe a child is in need of protection under s. 13 of the *Child, Family & Community Service Act*, make a report to MCFD.**

If there are sufficient indicia of risk, consider whether relevant details should be disclosed to police and to other protocol partners who are playing a role in safety planning or risk management.

See under Section C above for privacy provisions allowing non-consensual release for safety and risk management purposes or related to release without consent in the public interest.

- 2. Ensure disclosure of information is made in accordance with privacy laws**

- a. Information about the survivor/victim**

Information the survivor/victim provides can be disclosed with consent if the information in question is about her.

If possible and if it is safe to do so, every effort should be made to obtain written consent from the survivor/victim before disclosing their personal information to police and other protocol partners.

When making difficult judgment decisions about whether to disclose personal information *without* consent, the paramount principle guiding this decision is that the preservation of life trumps privacy.

There may be situations where it is not possible to get the survivor/victim's consent, for example, they may have left the community and their new contact information is unavailable. Be aware that if the child is under 19, but deemed to be

a “mature minor”, they may have the legal capacity to decide about the sharing of their personal information.

In the absence of the survivor/victim’s consent, protocol partners must be able to justify release of information on other grounds.

See under Section C above for privacy provisions allowing non-consensual release for safety and risk management purposes or related to release without consent in the public interest.

b. Information about the perpetrator

The survivor/victim may also provide information about the alleged perpetrator. Normally, disclosing this information would require the consent of the person whom the information is about, e.g. the perpetrator.

It may not be practical or safe to seek the perpetrator’s consent for release of information about him. Release of this information must therefore be justified on other grounds. This might include disclosure to police for the purposes of assisting in an investigation or in making a decision to start an investigation or disclosure for a purpose consistent with the originally stated purpose for which the information was collected.

3. Address Any Risks Associated With Releasing Personal Information

What this entails will depend on the circumstances of the case. Safety concerns should be canvassed with the victim/survivor and they should be referred to specialized anti violence services who can assist with the development of a safety plan. In cases where high risk indicators have been identified, police should conduct a risk assessment using a recognized risk assessment tool.

E. Disclosing Information in High Risk Situations: Procedural Safeguards

1. Decisions to disclose to be made on a case-by-case basis.
2. If possible and if safe to do so, make every effort to obtain the survivor/victim's consent before disclosing information about her. A decision to disclose survivor/victim information without her consent should only be made in rare circumstances.
3. Only release information relevant to the health and safety concern in question.
4. Designate someone in your agency who makes the decision.
5. If time permits, have this person consult with a supervisor.
6. Have the person authorizing the disclosure keep a confidential file containing a brief record of the disclosure decision.
7. Develop an overarching information sharing agreement which outlines restrictions on the use that will be made of the disclosed information, its secure storage and its safe disposal.
8. When transmitting the information, make reference to the conditions of disclosure contained in the information sharing agreement.
9. Find a safe way to keep the survivor/victim informed.
10. In appropriate circumstances, provide notice of the disclosure to the survivor/victim by mailing a notice to her last known address.

F. Where to Go For More Information

1. Further information on **privacy laws** can be found at:
 - www.oipc.bc.ca
 - www.priv.gc.ca/index_e.asp
2. For information on RCMP operational **policies** and child Protection response policies contact the Community Coordination for Women's Safety Program.
3. Information on **risk factors** associated with an increased likelihood of future violence in sexual assault cases can be accessed at:

- <http://proactive-resolutions.com/shop/the-risk-for-sexual-violence-protocol-rsvp/#>