



Approaches by security and law enforcement agencies

Guide for organizations

As part of their work serving refugees and immigrants, organizations may be approached by law enforcement agencies, including CBSA¹, CSIS², RCMP³ or local police.

This document is designed to help organizations understand their obligations and their rights.

Member organizations are invited to submit to the CCR any feedback on this document for future updates.

KEY POINTS

- A. Organizations are **not obligated by law** to answer questions by enforcement agencies.
- B. Organizations have an obligation to **protect their clients' privacy** and **act in their best interest**.
- C. Organizations may be legally required to disclose personal information in specific situations, notably in order to **comply with a subpoena, a warrant or an order by a court**.
- D. Organizations should adopt a **protocol for responding** to approaches by enforcement agencies with a core principle that no personal information will be disclosed without the client's consent.
- E. Organizations should have a **privacy policy** highlighting their commitment to protect their clients' personal information, and post it in the area where clients are served and on their website.
- F. Organizations should ensure that staff and relevant volunteers are adequately **trained** on the protocol and privacy policy and that they are supported if they are subjected to pressures.
- G. Organizations approached by enforcement agencies should **document** the interaction in detail.

¹ Canada Border Services Agency (CBSA): Responsible for border and immigration enforcement.

² Canadian Security Intelligence Service (CSIS): Canada's spy agency, responds to activities suspected of being a threat to Canada.

³ Royal Canadian Mounted Police (RCMP): Canadian national police service.

Scenarios

- Someone from CBSA telephoned an organization and, without identifying themselves, asked for a refused refugee claimant by name. The organization suspected that CBSA was trying to find out if the person had changed addresses, which would be interpreted by CBSA as an indication that the person did not intend to be removed.
- A CSIS official appeared at an organization's doors, asking for a client by name. They asked a lot of questions.
- An employee of an organization was approached by CSIS and asked to help them understand the local community, based on the employee's country of origin. The employee was contacted outside of work: it was not clear whether CSIS was interested in them as a source of information because of their place of employment.
- The police called the organization asking about a client. The client had been reported missing, and the family and police were looking for her.
- A client who was undergoing a security screening by CSIS proposed an employee of the organization as a reference.
- CSIS contacted an employee originally from outside Canada twice asking for their cooperation if they heard anything in the community.

Elements suggested for an organization's protocol

Core principles:

- No personal information will be disclosed without full consent of the client, unless required by law.
 - In **exceptional** circumstances, information may be disclosed without consent if it is clearly in the client's best interest and consent cannot be obtained in time: in such cases, the client will be informed as soon as possible afterwards of the information disclosed. Extreme caution must be used as it is difficult for an agency to guess at whether it's in the person's best interest.
1. If approached by an enforcement agency about a client, the organization will respond that they cannot answer until they have consent from the person, and ask for the agent's name and contact information. Depending on the staff level, the person originally contacted might need to ask the agent to contact a supervisor or designated member of staff directly.
 2. The organization will document the approach, including recording details of how/where they were approached (at the office or outside of the office) and what questions were asked.

3. The organization will report to clients any inquiries made by enforcement agencies concerning them.
4. If a client wishes the organization to disclose information to the enforcement agency, the client will be asked to sign a consent clarifying what information is to be disclosed and to whom. The organization may then disclose the information specified.
5. The organization will seek legal counsel if the agency argues that there is a legal obligation to provide information.
6. If a staff member believes that there are exceptional circumstances and it is in the best interest of a client to disclose information but consent cannot be obtained in a timely manner, the staff member will consult with a designated person in the organization. **Extreme caution** will be exercised in concluding that an exception should be made. In the event that information is disclosed, this will be reported to the client as soon as possible.
7. Any staff or volunteers of the organization approached by an enforcement agency will report the approach to a designated person within the organization (e.g. Executive Director).
8. Staff and volunteers will be assured of the support of the organization in the event of being approached to assist CSIS (or other agencies), taking into account the stress caused and the particular insecurity felt by persons who are not Canadian citizens. This may include supporting a complaint if warranted.

How to support employees contacted by CBSA, CSIS, RCMP or police

The following are some suggestions for organizations to support staff (and volunteers) before, during, and after being approached by an enforcement or security agency.

- Have staff read through the organization's privacy policy and ask them to sign to indicate their intention to respect the policy.
- Explain the protocol for approaches by CSIS, CBSA or police to all staff.
- Have staff meet together and discuss different scenarios where they may be approached by an agent of CSIS, CBSA or police, and the appropriate responses, in accordance with the protocol.
- If an employee reports an interaction, give the employee an opportunity to voice any concerns they may have. Be sensitive to the particular ways the interaction may be difficult for people who are not Canadian citizens or who are from communities targeted by security and enforcement agencies. Take the appropriate steps to follow up if necessary. This may mean following up with the agency to raise concerns about the stress caused to employees.
- If appropriate, consider lodging a complaint with the agency. With CSIS, the complaint can be lodged with the Director of CSIS first, followed by the Canadian Security Intelligence Review

Committee if the response is not satisfactory. With CBSA there is no formal complaint mechanism, but there is a feedback form available on the website. However, it is recommended to send a detailed complaint by mail to the CBSA President. For RCMP, the online complaint form can be filled out or printed and mailed to the Civilian Review and Complaints Commission for the RCMP. Local police forms should also have complaints mechanisms.

- o If there is a particularly troubling incident or pattern of incidents, raise it with the CCR so that members can discuss whether it is generalized and whether action should be taken in response.

Privacy legislation – General Principles

What exists in Canadian privacy legislation?

For corporations and non-governmental organizations, privacy is protected by federal and provincial legislation. At the federal level, the *Personal Information Protection and Electronic Documents Act* (PIPEDA) regulates the collection, use and disclosure of personal information by private organizations. Alberta, British Columbia and Quebec have adopted their own private sector legislation, deemed substantially similar to PIPEDA.

Unlike British Columbia's legislation, which applies to all private organizations in the province, PIPEDA and the Alberta and Quebec legislation do not generally apply to not-for-profit organizations, unless they are conducting a commercial activity. The Federal Privacy Commissioner has however recommended that non-profit organizations adhere to the underlying privacy principles and practices set out in federal and provincial privacy legislation.

Private organizations not subject to any federal or provincial law should refer to the *Canadian Standards Association (CSA) Model Code for the Protection of Personal Information* (incorporated into PIPEDA). In particular there are two core principles: **Obtain informed consent** and **Limit use, disclosure, and retention**.

Obtaining informed consent

Organizations should obtain the knowledge and consent of the individual for the collection, use, and disclosure of personal information, except where inappropriate.

Limiting use, disclosure, and retention

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.

What is personal information?

Personal information means any recorded information about an identifiable individual. This includes for instance an individual's name, home address and phone number, age, sex, marital or family status, national or ethnic origin, religion, medical, criminal or employment history.

What are the exceptions to these principles?

There are **circumstances when an organization does not have to obtain an individual's consent before using or disclosing personal information**. Sometimes, organizations must disclose personal information to law enforcement agencies. In some cases they are not obligated to do so, but they may disclose information if it is in the client's best interest.

Circumstances that *compel* disclosure of personal information

- In general, organizations may disclose personal information without the individual's knowledge or consent in order to **comply with a subpoena, a warrant or an order** made by a court or another body with jurisdiction to compel the production of personal information.
- Organizations may also disclose personal information without the individual's knowledge when it is **required by law**. This is the case when legislation prescribes disclosure (for example, youth protection legislation requiring reporting of children in need of protection).

Note re Bill C-51 (Anti-Terrorism Act, 2015): This legislation does not appear to compel non-governmental organizations to provide information to the government. However, depending on the reporting requirements of funding contracts with government, NGOs may be contractually obliged to provide information to the one federal government department that could then be subject to the information sharing provisions of Bill C-51 within government. The NGO would not be aware of how a client's personal information was passed on to other government departments.

Circumstances that *allow* disclosure of personal information without consent

- Other exceptions to the privacy principles are different in each law (federal/provincial). As a general principle, federal and provincial legislation provide that personal information may be disclosed without the individual's knowledge and consent **when the disclosure is clearly in the interests of the individual and consent cannot be obtained in a timely way. Extreme caution must be used** as it is difficult for an organization to assess whether disclosure is in the person's best interest.

Circumstances when an organization *may*, but *does not have to*, use or disclose personal information without the individual's knowledge or consent:

- The disclosure is made to a government institution that has requested the information, identified its lawful authority to obtain the information, and indicated that disclosure is **for the purpose of enforcing, carrying out an investigation, or gathering intelligence** relating to any federal, provincial or foreign law; or suspects that the information relates to national security, the defence of Canada or the conduct of international affairs; or is for the purpose of administering any federal or provincial law, or of communicating with the next of kin of an injured, ill or deceased individual; (PIPEDA, section 7 (3)(c.1)).
- The disclosure is made **for purposes related to the investigation of a breach of an agreement or a contravention** of a federal or provincial law (PIPEDA, section 7 (3)(d)). The language in the BC legislation is tighter: "concerning an offence under the laws of Canada", not just breaking a law.
- There is an **emergency** threatening an individual's life, health, or security. The organization must inform the individual of the disclosure without delay. (PIPEDA, section 7 (3)(e)).

Links

Privacy Legislation in Canada

National

- *The Personal Information Protection and Electronic Documents Act (PIPEDA)*:
https://www.priv.gc.ca/leg_c/leg_c_p_e.asp and Privacy Principles:
https://www.priv.gc.ca/leg_c/p_principle_e.asp
- Privacy toolkit: https://www.priv.gc.ca/information/pub/guide_org_e.asp

Provincial

- **Alberta:** *Personal Information Protection Act*: <http://servicealberta.ca/pipa-overview.cfm>
- **British Columbia:** *Personal Information Protection Act*:
http://www.bclaws.ca/Recon/document/ID/freeside/00_03063_01 and *A Guide to B.C.'s Personal Information Protection Act for Businesses and Organizations*, <https://www.oipc.bc.ca/guidance-documents/1438>
- **Quebec:** *Learning from a decade of experience: Quebec's Private Sector Privacy Act*:
https://www.priv.gc.ca/information/pub/dec_050816_e.pdf

Other resources

- Canadian Association of Social Workers, *Guidelines for Ethical Practice*, <http://www.casw-acts.ca/en/what-social-work/casw-code-ethics/guideline-ethical-practice>
- BCCLA, *Arrest Handbook— your rights and the police*, <https://bccla.org/wp-content/uploads/2015/03/2009-BCCLA-Handbook-Arrest-Handbook-English.pdf>
- Islamic Social Services Association and National Council of Canadian Muslims, *United Against Terrorism: A Collaborative Effort Towards a Secure, Inclusive and Just Canada*, <http://www.nccm.ca/united-against-terrorism-a-collaborative-effort-towards-a-secure-inclusive-and-just-canada/>
- Canadian Civil Liberties Association, *Know Your Rights Booklet*, <https://ccla.org/cclanewsitewp-content/uploads/2015/02/Know-Your-Rights-Booklet.pdf> and *Canadian Security Intelligence Service (CSIS): What do you need to know?*
<https://ccla.org/cclanewsitewp-content/uploads/2015/05/CSIS-Background-Information-CCLA.pdf>

