

Privacy law guidelines for law firms in Alberta

As of January 1, 2004, the federal privacy law, the *Personal Information Protection and Electronic Documents Act* (“*PIPEDA*”) applies to all corporations, individuals and organizations engaged in commercial activities unless the provincial government enacts ‘substantially similar’ legislation. Here in Alberta, the province enacted the *Personal Information Protection Act* (“*PIPA*”) in force January 1, 2004. What does that mean for your law firm?

Privacy law is still common sense with some special considerations and new concerns. Lawyers and their employees, contractors and agents have a long tradition of client confidentiality. Those rules remain, but now clients and other individuals have legal rights protecting the collection, use and disclosure (“c.u.d.”) of their own personal information.

What’s to be done?

1. Appoint a responsible privacy officer for the law firm, i.e. someone aware of PIPA, to field questions and manage access requests.
2. Have a basic understanding of the legislation and privacy law principles. The Alberta CBA has privacy law sections in Calgary and Edmonton able to assist and inform CBA members on privacy law issues and current events.
3. Review your firm’s current personal information practices and security measures to protect personal information and client files.
4. Develop consents for the collection, use and disclosure of your client’s personal information to be signed as part of your file opening process. A drafting guideline for collecting client’s consent is attached.
5. Insure that the collection, use and disclosure of personal information have a reasonable business purpose for the provision of legal services.
6. Prepare your firm’s privacy statement, code or policy and then notify your clients. A sample privacy statement is attached.
7. Prepare a procedure for access requests and requests to correct or amend the personal information.
8. Prepare a process for complaints or inquires about your firm’s privacy and personal information practices.
9. Communicate your firm’s privacy standards, policies and procedures with your staff and contractors. Obtain their commitment to your privacy standards.
10. Develop personal information policies concerning employee information.
11. If in doubt, attend a privacy law course, conference or consult with a privacy law practitioner.

FAQ's

Why appoint a privacy officer or privacy manager?

PIPA requires that your law firm appoint a responsible individual to insure that your firm is compliant with PIPA. This person will be the first contact for clients or the Privacy Commissioner of Alberta if there are privacy concerns. If you are a sole practitioner, it's just one more hat and one more responsibility.

What is 'personal information'?

Personal information is everything about an identifiable individual, such as home address, home phone number, gender, medical information, employment history, comments about the individual. Business contact information of any individual such as office address (unless a home office), business telephone number, job title or other similar business contact information is not considered personal information under PIPA. This is a broader exception than PIPEDA which only covered the business contact information of an organization's employee.

What is 'employee personal information'?

Under PIPA, employee personal information is treated differently than other individual's personal information. In an employee-employer relationship, PIPA grants a deemed consent for an employer to collect, use and disclose personal information concerning an employee for the reasonable purposes of establishing, managing or terminating (E.M.T.) the employment relationship.

Is consent required for the collection, use and disclosure of all personal information?

No, there are exceptions where you are not required to obtain consent to collect, use or disclose personal information. Of importance to lawyers is the PIPA exception to consent when the law firm is collecting, using or disclosing personal information reasonable for the purposes of an investigation or a legal proceeding. Some other exceptions to an individual's consent are statutory authority, debt collection for law firm debts, publicly available information and court orders. In situations where organizations or individuals outside your law firm request personal information from you and purport to have statutory authority to collect and use this information without the individual's consent, it is recommended that you insure the identity of the individual and organization, require that they produce the relevant statutory authority, verify the authority and document the authentication process on the file to protect your law firm.

Can clients access their files and what does that mean?

Under PIPA, law firms have 45 days from the date of a written request, to provide clients and other individuals with access to the personal information that your law firm has in its possession or control. In the case of individuals other than employees, your law firm can charge a reasonable fee for the access request, such as photocopying charges. It is a violation of PIPA if your law firm fails to provide the personal information or provide a reasonable response if you no longer have the personal information within the 45 days. PIPA provides for exceptions to access such as legal privileges. Solicitor's liens and Law Society Rules still apply to lawyer's conduct regarding access requests and handling personal information.

Accuracy of personal information

Individuals have a right to correct the personal information that law firms have. Once an access request is made, an individual may request that the law firm correct or amend the personal information. The law firm may refuse for good reasons. The individual may then appeal to the Privacy Commissioner of Alberta.

How long should law firms keep personal information?

Your law firm should develop a retention schedule for your client files and employee files. Relevant laws such as limitation periods and Law Society rules will govern the length of time and the type of information that should be retained. Insure that the destruction of personal information is both secure and effective. Develop a shredding practice for confidential documents. No one wants to see their medical records in a recycling program.

When your law firm hires an individual, all documents such as resumes used to make the decision must be kept for a period of one year.

What happens if a client or anyone makes a complaint?

No matter what the complaint, try to resolve the matter directly with the client or employee, attempt mediation and resolution. If the client or employee has a valid complaint, revise your practices as reasonably necessary to comply with PIPA. If the complaint is escalated to the Privacy Commissioner of Alberta, he may appoint a portfolio officer to investigate. Again use common sense and cooperate. Ascertain the real privacy issues versus the actual overall client issues. There may be occasions where the privacy complaint is just a result of a larger relationship breakdown. There are whistleblower protections for individuals who make reasonable complaints to the Privacy Commissioner of Alberta.

Are there penalties or offences under PIPA?

Yes. The offences include a willful contravention of PIPA when collecting, using or disclosing personal information. For example, if your law firm sold its client list to an insurance company to market insurance to your clients without their consent and continued to do so even after complaints from your clients. A lawyer or law firm could also be in trouble if you or your staff destroyed relevant documents after receiving a written request for personal information. And of course, if anyone obstructs the Alberta Privacy Commissioner's investigation, or fails to follow a Privacy Commissioner's order, there may be serious consequences.

PIPA penalties include fines up to \$10,000 for an individual and up to \$100,000 for a person other than an individual.

Are other law firms in Canada subject to privacy laws?

Only Alberta, British Columbia and Quebec have provincial private sector privacy laws. All other lawyers and law firms in Canada must comply with the federal privacy law, PIPEDA.

Where can your privacy officer or law firm obtain more information?

Here are some useful websites:

Privacy Commissioner of Alberta: www.oipc.ab.ca

Privacy Commissioner of B.C.: www.oipc.bc.ca

Privacy Commissioner of Canada: www.privcom.gc.ca

Private Sector Privacy in Alberta: www.psp.gov.ab.ca

The Alberta branch of the CBA has a privacy law section in Calgary and in Edmonton which meets regularly to discuss privacy law issues.

These guidelines and FAQ's were prepared by Susan Dumont, lawyer and principal of PrivacyMatters Inc., a law practice dedicated to private sector privacy law and consulting, vice chair of the national CBA privacy law section, co-chair of the Alberta south FOIP and privacy law section and former Privacy Manager for Canadian Pacific Railway.