

**Guideline 6B: Record Keeping and Client Identification
for Accountants and
Real Estate Brokers or Sales Representatives**

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June 2005

This replaces the previous version of *Guideline 6: Record Keeping and Client Identification for Legal Counsel, Accountants and Real Estate Brokers or Sales Representatives* issued in June 2002. The changes made to this version are indicated by a side bar to the right of the modified text.

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1 General

The objective of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* is to help detect and deter money laundering and the financing of terrorist activities. It is also to facilitate investigations and prosecutions of money laundering and terrorist activity financing offences. This includes reporting, record keeping, client identification and compliance regime requirements for the following financial intermediaries:

- **Accountants or accounting firms.** An accountant means a chartered accountant, a certified general accountant or a certified management accountant. An accounting firm means an entity that is in the business of providing accounting services to the public that has at least one accountant who is either a partner, an employee or an administrator; and
- **Real estate brokers or real estate sales representatives.** This means an individual or an entity that is registered or licensed in a province to sell or purchase real estate.

If you are one of these financial intermediaries, you are only subject to the obligations explained in this guideline when you engage in the activities described in Section 2.

This guideline has been prepared to help you meet your record keeping and client identification obligations. It uses plain language to explain the most common situations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* as well as the related Regulations. It is provided as general information only. It is not legal advice, and is not intended to replace the Act and Regulations.

Record keeping and client identification obligations for other types of reporting persons or entities are explained by sector in other versions of this guideline (financial entities, securities dealers, life insurance companies, brokers and agents, foreign exchange dealers, money services businesses, agents of the Crown that sell or redeem money orders, and casinos).

For more information about money laundering and terrorist financing, or other requirements under the Act and Regulations applicable to you, see the guidelines in this series:

- *Guideline 1: Backgrounder* explains money laundering, terrorist financing, and their international nature. It also provides an outline of the legislative requirements as well as an overview of FINTRAC's mandate and responsibilities.
- *Guideline 2: Suspicious Transactions* explains how to report a suspicious transaction. It also provides guidance on how to identify a suspicious transaction, including general and industry-specific indicators that may help when conducting or evaluating transactions.
- *Guideline 3: Submitting Suspicious Transaction Reports to FINTRAC* explains when and how to submit suspicious transaction reports. There are two different versions of Guideline 3, by reporting method.

- *Guideline 4: Implementation of a Compliance Regime* explains the requirement for reporting persons and entities to implement a regime to ensure compliance with their obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and associated Regulations.
- *Guideline 5: Submitting Terrorist Property Reports to FINTRAC* explains when and how to submit terrorist property reports.
- *Guideline 6: Record Keeping and Client Identification* explains the requirement for reporting persons and entities to identify their clients and keep records. There are eight different versions of *Guideline 6*, by sector.
- *Guideline 7: Submitting Large Cash Transaction Reports to FINTRAC* explains when and how to submit large cash transaction reports. There are two different versions of *Guideline 7*, by reporting method.
- *Guideline 8: Submitting Electronic Funds Transfer Reports to FINTRAC* explains when and how to submit EFT reports.
- *Guideline 9: Submitting Alternative to Large Cash Transaction Reports to FINTRAC* explains when and how financial entities can choose the alternative to large cash transaction reports. This is only applicable to financial entities.

If you need more help after you read this or other guidelines, call FINTRAC's national toll-free enquiries line at 1-866-346-8722.

Throughout this guideline, several references are provided to additional information that may be available on external Web sites. FINTRAC is not responsible for the accuracy, reliability or currency of the information contained on those external Web sites. The links provided are based on information available at the time of publishing of this guideline.

Throughout this guideline, any references to dollar amounts (such as \$10,000) refer to the amount in Canadian dollars or its equivalent in foreign currency.

2 Record Keeping and Client Identification Obligations

As a financial intermediary, you have record keeping and client identification obligations when you engage in any of the following activities:

- If you are an **accountant or an accounting firm**, you are subject to the obligations explained in this guideline when you engage in any of the following activities on behalf of any person or entity (other than your employer) or give instructions in respect of those activities on behalf of any person or entity (other than your employer):
 - receiving or paying funds;
 - purchasing or selling securities, real property or business assets or entities;
or
 - transferring funds or securities by any means.

You are also subject to these obligations when you receive professional fees to engage in any of the activities listed above. This means that you would be subject to the record keeping and client identification requirements when you engage in any of the activities mentioned above even if you were doing them on a volunteer basis.

Activities of accountants or accounting firms other than those listed above, such as audit, review or compilation engagements carried out according to the recommendations in the Canadian Institute of Chartered Accountants (CICA) Handbook, do **not** trigger record keeping or client identification obligations.

Giving advice to a client, in the context of your accountant-client relationship, is not considered providing instructions.

- If you are a **real estate broker or sales representative**, you are subject to this when you engage in any of the following activities on behalf of any person or entity in the course of a real estate transaction:
 - receiving or paying funds;
 - depositing or withdrawing funds; or
 - transferring funds by any means.

When you engage in those activities and you conduct a large cash transaction, your obligations are as follows:

- Keep a large cash transaction record (see Section 3);
- Identify the individual (see Section 4); and
- Make a third party determination and keep related records (see Section 5)

There are some exceptions and these are explained throughout each section.

The use of personal information in Canadian commercial activities is protected by the *Personal Information Protection and Electronic Documents Act*, or by substantially similar provincial legislation. You have to inform individuals concerning the collection of personal information about them. However, you do not have to inform individuals when you include personal information about them in any reports that you are required to make to FINTRAC. You can get more information about your responsibilities in this area from the following:

- The office of the Privacy Commissioner of Canada (http://www.privcom.gc.ca/information/guide_e.asp); or
- Industry Canada (http://privacyforbusiness.ic.gc.ca/epic/internet/inpfb-cee.nsf/en/h_hc00000e.html).

3 Records To Be Kept

When you engage in the activities listed above and you conduct a large cash transaction, you have to keep large cash transaction records. Details about this type of record are provided in Section 3.1.

This guideline describes your record keeping obligations under Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. Your policies and procedures may cover situations other than the ones described in this guideline, and you may require additional records to be kept for purposes other than your requirements under this legislation. For example, the retention period for your records may vary for purposes other than what is described in this guideline.

3.1 Large Cash Transaction Records

This is a record for every amount of cash of \$10,000 or more that you receive from a client in a single transaction. For example, if your client brings you \$10,000 in cash to transfer on his or her behalf, you have to keep a large cash transaction record. In addition to this record, a large cash transaction will also require a report to FINTRAC as explained in *Guideline 7: Submitting Large Cash Transaction Reports to FINTRAC*.

If you know that two or more cash transactions of less than \$10,000 each were made within a 24-hour period (i.e., 24 consecutive hours), by or on behalf of the same client, these are considered to be a single large cash transaction if they add up to \$10,000 or more. In this case, you would have to keep a large cash transaction record, and report the transaction to FINTRAC as explained above.

You do **not** have to keep a large cash transaction record or make a large cash transaction report to FINTRAC if the cash is received from a financial entity or a public body. In this context, a financial entity means any of the following:

- a bank (i.e., one that is listed in Schedule I or II of the *Bank Act*) or an authorized foreign bank with respect to its operations in Canada;
- a credit union or a caisse populaire;
- a trust and loan company; or
- an agent of the Crown that accepts deposit liabilities.

Also in this context, a public body means any of the following or their agent:

- a provincial or federal department or Crown agency;
- an incorporated municipal body (including an incorporated city, town, village, metropolitan authority, district, county, etc.); or
- a hospital authority. A hospital authority means an organization that operates a public hospital and that is designated to be a hospital authority for GST/HST purposes. For more information on the designation of hospital authorities, refer to GST/HST Memoranda Series, Chapter 25.2, *Designation of Hospital Authorities*

available from the following Web site: <http://www.cra-arc.gc.ca/E/pub/gm/25-2/25-2-e.pdf>.

Contents of a large cash transaction record

For any large cash transaction, the information you have to keep in a large cash transaction record includes the following:

- the amount and currency of the cash received;
- the name of the individual from whom you received the cash and that individual's address and principal business or occupation;
- the date of the transaction;
- the purpose, details and type of transaction (for example, the cash was for you to transfer on your client's behalf, etc.), including whether any other individuals or entities were involved in the transaction;
- how the cash was received (for example, in person, by mail, by armoured car, or any other way); and
- if an account was affected by the transaction, include the following:
 - the number and type of any such account;
 - the full name of the client that holds the account, and
 - the currency in which the account's transactions are conducted.

If any of this information is readily available in other records that you have to keep (as described below), it does not have to be kept again as part of the large cash transaction record.

If you have to identify the individual as explained in Section 4, the large cash transaction record also has to contain the following information:

- the individual's date of birth; and
- the type of document used to confirm the individual's identity, the document's reference number and its place of issue.

4 Client Identity

4.1 When and How Do You Have To Identify Clients?

As a financial intermediary, you have client identification obligations when you engage in the activities described at the beginning of Section 3. You have to take the following measures to identify individuals or entities, subject to the general exceptions outlined in Section 4.3.

This guideline describes your client identification obligations, under Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. Your policies and procedures may cover requirements other than the ones described in this guideline, and you may need additional identification for purposes other than your requirements under this

legislation. For example, you may have to request an individual's social insurance number for income tax purposes.

Section 4.2 explains the need to identify individuals when they conduct a large cash transaction.

4.2 Client Identity for Large Cash Transactions

You have to identify any individual with whom you conduct a large cash transaction, at the time of the transaction, if it is one for which you have to keep a large cash transaction record, as described in Section 3.1.

To identify an individual, refer to the individual's birth certificate, driver's licence, passport, record of landing, permanent resident card or other similar document. Examples of other similar documents include an old age security card, a certificate of Indian status, or a card with the individual's signature and photograph on it issued by any of the following:

- the Insurance Corporation of British Columbia;
- Alberta Registries;
- Saskatchewan Government Insurance;
- the Department of Service Nova Scotia and Municipal Relations;
- the Department of Transportation and Public Works of the Province of Prince Edward Island;
- Service New Brunswick;
- the Department of Government Services and Lands of the Province of Newfoundland and Labrador;
- the Department of Transportation of the Northwest Territories; or
- the Department of Community Government and Transportation of the Territory of Nunavut.

You can refer to an individual's provincial health card, but only if it is not prohibited by provincial or territorial legislation. For example, you cannot refer to an individual's provincial health card from Ontario, Manitoba or Prince Edward Island since health cards cannot be used for this purpose in these provinces. As another example, in Quebec, you cannot request to see a client's health card, but you may accept it if they want to use it for identification purposes. If you have questions about the use of health cards for identification, please contact the appropriate provincial issuer for more information.

A social insurance number (SIN) card can be used to verify the identity of a client, but the SIN (i.e. the number itself) is not to be provided to FINTRAC on any type of report. The office of the Privacy Commissioner (<http://www.privcom.gc.ca>) has produced a fact sheet concerning best practices for the use of SINs. Please consult it for more information on this topic (http://www.privcom.gc.ca/fs-fi/02_05_d_21_e.asp).

For a document to be acceptable for identification purposes, it must have a unique identifier number. Also, the document used must have been issued by a provincial, territorial or federal government. For example, a birth or baptismal certificate issued by a church would not be acceptable. Also, an identification card issued by an employer for an employee (i.e. an employee identification card) is not acceptable.

The document also has to be a valid one. In other words, an expired driver's licence would not be acceptable.

Valid foreign identification, if equivalent to an acceptable type of Canadian identification document, would also be acceptable for the purposes explained in this guideline. For example, a valid foreign passport is acceptable.

When you refer to a document to identify an individual, it has to be an original, not a copy of the document. In cases where it is not possible for you to view the original yourself, you may choose to use an agent to verify the original identification document on your behalf. Even if you use an agent, you are responsible for making sure the identification requirements are met. If you do this, you should enter into a written agreement with the agent outlining what you expect the agent to do for you.

Once you have confirmed the identity of an individual as explained in this guideline, you do not have to confirm their identity again if you recognize the individual at the time of a future event that would otherwise trigger the identification requirement.

5 Third Party Determination and Related Records

5.1 Third Party Determination

You have to make a third party determination when you have to keep a large cash transaction record. You have to take reasonable measures to determine whether the individual who gives you the cash is acting on the instructions of a third party.

In this context, a third party is an individual or entity other than the individual who conducts the transaction. When determining whether a "third party" is involved, it is not about who "owns" the money, but rather about who gives instructions to deal with the money. To determine who the third party is, the point to remember is whether the individual in front of you is acting on someone else's instructions. If so, that someone else is the third party.

In making a third party determination when employees are acting on behalf of their employers, they are considered to be acting on behalf of a third party. The only exception to this is applicable to deposit taking institutions when they have to make a third party determination: an employee depositing cash to his or her employer's account is not considered to be acting on behalf of a third party.

What constitutes reasonable measures will vary in accordance with the context in which they occur, and therefore could differ from one situation to the next. However, reasonable measures would include retrieving the information already contained in your files or elsewhere within your business environment, or obtaining the information directly from the client.

5.2 Third Party Records

If you determine that there is in fact a third party who gave instructions to the individual conducting the transaction, you have to keep a record of the following information:

- the third party's name, address and principal business or occupation;
- the incorporation number and place of incorporation if the third party is a corporation; and
- the nature of the relationship between the third party and the individual who gives you the cash. For examples of third party relationships, see field 18 of Part G in the large cash transaction report.

If you are not able to determine that there is in fact a third party, but you have reasonable grounds to suspect that the individual is acting on a third party's instructions, you have to keep a record to indicate whether, according to the individual giving the cash, the transaction is being conducted on behalf of a third party. This record must also indicate details of why you suspect the individual is acting on a third party's instructions.

6 How Should Records Be Kept?

You should maintain an effective record keeping system to enable FINTRAC to have access to the records in a timely fashion. Your records have to be kept in such a way that they can be provided to FINTRAC within 30 days of a request to examine them.

For the requirements explained in this guideline, you can keep records in a machine-readable or electronic form, as long as a paper copy can be readily produced. Also, for records that are kept electronically, an electronic signature of the individual who must sign the record has to be retained.

You are not required to keep a copy of the reports you make to FINTRAC, but you may choose to do so. It is recommended that you keep the information that FINTRAC sends you in the acknowledgement message about each report processed. This provides the date and time the report was received along with its FINTRAC-generated identification number.

Timeframe for keeping records

Large cash transaction records must be kept for a period of at least five years following the date they were created.

Employees or contractors who keep records for you

Your employees who keep records (as described in Section 3) for you are not required to keep those records after the end of their employment with you. The same is true for individuals in a contractual relationship with you, after the end of that contractual relationship. This means that you have to get and keep the records that were kept for you by any employee or contractor before the end of that individual's employment or contract with you.

7 Penalties for Non-Compliance

Failure to comply with your record keeping requirements can lead to criminal charges against you. Conviction of failure to retain records could lead to up to five years imprisonment, to a fine of \$500,000, or both.

8 Comments?

These guidelines will be reviewed on a periodic basis. If you have any comments or suggestions to help improve them, please send your comments to the mailing address provided below, or by email to guidelines@fintrac.gc.ca.

9 How to Contact FINTRAC

For further information on FINTRAC and its activities, reporting and other obligations, please go to FINTRAC's website (<http://www.fintrac.gc.ca>) or contact FINTRAC:

Financial Transactions and Reports Analysis Centre of Canada
234 Laurier Avenue West, 24th floor
Ottawa, Ontario
Canada K1P 1H7

Toll-free: 1-866-346-8722