
Requesting Personal Information from the Private Sector

Forms and Guidelines for Law Enforcement Agencies

1. Introduction

Law enforcement agencies have reported that organizations that have become subject to privacy legislation relatively recently are uncertain whether they can disclose personal information to law enforcement agencies for the purposes of investigations. In some cases, organizations that previously assisted law enforcement agencies may refuse to disclose personal information without a warrant or subpoena.

Service Alberta has developed two forms to assist law enforcement agencies requesting personal information from organizations. One is for disclosures within Alberta that are subject to Alberta's *Personal Information Protection Act* (PIPA). The other is for disclosures that are subject to the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA).

A law enforcement agency that requests personal information from an organization is asking that organization to make a decision for which it will be held accountable if the organization decides to disclose personal information without the consent of the individual the information is about. It is therefore imperative that the requesting law enforcement agency inform itself of the requirements for disclosure under the applicable law. A law enforcement agency can use the Request Form developed by Service Alberta to provide an organization with all of the elements required for the organization to decide whether it can lawfully disclose the requested information.

These guidelines discuss the following topics:

- Which privacy law applies to the request
- Disclosure under PIPA
- Disclosure under PIPEDA

Questions that organizations may ask are discussed under the Act that applies. The forms are provided in Appendix A (for PIPA) and Appendix B (for PIPEDA).

It needs to be remembered that being the subject of a request for personal information for the purposes of a law enforcement investigation may be very prejudicial to an individual, even if the individual is not the principal subject of the investigation and the matter never leads to a prosecution. The law enforcement agency must always balance the need to provide sufficient information to allow an organization to make a reasonable decision with the need to protect the privacy of the individual whose personal information is being requested.

2. Which private sector privacy law applies to the disclosure request

The federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) has been in place for “federal works, undertakings, and businesses” (e.g. banks, telecommunications companies and railways) since January 2001.

As of January 1, 2004, PIPEDA applies to every organization across Canada when collecting, using or disclosing personal information in the course of a commercial activity within a province, unless a province passes legislation that receives an exemption order under PIPEDA. PIPEDA also applies to every organization that collects, uses or discloses personal information in the course of a commercial activity where the personal information crosses provincial boundaries.

Alberta’s *Personal Information Protection Act* (PIPA) came into force on January 1, 2004 and received an exemption order under PIPEDA. PIPA applies to the collection, use and disclosure of personal information within Alberta by private-sector organizations other than federal works, undertakings and businesses.

PIPA applies to

- corporations,
- unincorporated associations,
- trade unions,
- partnerships, and
- individuals acting in a commercial capacity.

The Act has some special provisions for self-governing professions and non-profit organizations.

It is important for both law enforcement agencies and organizations to know which piece of legislation applies and what the applicable rules are.

If the organization you are dealing with is subject to PIPA, please refer to

- Section 3 below, and
- Appendix A for the form entitled “Law Enforcement Disclosure Request – Request by a Law Enforcement Agency in Alberta to an Organization Subject to PIPA.”

If the organization you are dealing with is subject to PIPEDA, please refer to

- Section 4 below, and
- Appendix B for the form entitled “Law Enforcement Disclosure Request – Request by an Alberta Law Enforcement Agency to an Organization Subject to PIPEDA.”

3. Request by a law enforcement agency in Alberta to an organization subject to PIPA

PIPA governs the disclosure of personal information by organizations. Section 19 sets out the general limitations that an organization must consider when disclosing personal information. Section 20 of PIPA governs when organizations can disclose personal information about an individual without the consent of the individual.

Meeting the reasonableness requirement (section 19)

Section 19 is the “reasonable” limit section; it limits the disclosure of personal information by organizations to purposes that are reasonable. This section also limits the scope of the disclosure.

An organization may disclose personal information under the following circumstances:

- only for purposes that are reasonable, and
- only to the extent it is reasonable for meeting the purposes for which the information is disclosed.

“Reasonable” means what a reasonable person would consider appropriate in the circumstances (section 2).

TIP: Law enforcement agencies should consider section 19 when they are filling out the Law Enforcement Disclosure Request. The type and amount of information requested should be reasonable for the purpose described, bearing in mind that there is likely to be some uncertainty about the information that is held by the organization to which the request is being made. For example, the law enforcement agency should consider the following questions:

- What information is the organization likely to have and how is it likely to be organized? Would some preliminary discussion with the person responsible for compliance with PIPA within the organization assist in defining the scope of the request for personal information?
- Is the personal information requested reasonable in scope with respect to the specific investigation? Consider whether you actually need an entire file or some very targeted information from a file. Law enforcement agencies should collect only as much personal information as is reasonable for meeting the stated purpose of the request.
- Will some targeted information assist the law enforcement agency to take further steps – for example, to meet the requirements for a subpoena, warrant or court order that it may be unable to obtain without the information? If this is the case, the law enforcement agency should include some explanation regarding this in the form.

Meeting the requirement for disclosure to assist a law enforcement agency in an investigation (section 20(f))

Section 20 is discretionary. The organization has the ability to decide whether to disclose personal information. Disclosure is *required* only in some circumstances, such as when other legislation requires the disclosure or when another legal instrument, such as a court order, requires disclosure of information.

There are several subsections of section 20 that may pertain to law enforcement activities. The most clearly applicable to a request for disclosure by a law enforcement agency is section 20(f):

20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:

- (f) the disclosure of the information is to a public body or a law enforcement agency in Canada to assist in an investigation
 - (i) undertaken with a view to a law enforcement proceeding, or
 - (ii) from which a law enforcement proceeding is likely to result

In order for a disclosure to a law enforcement agency or public body to fall within section 20(f), the disclosure must meet the following three requirements:

- **The party requesting the personal information must be a “public body” or a “law enforcement agency” in Canada.**

“Law enforcement agency in Canada” is not defined in PIPA, but can reasonably be interpreted to include a variety of agencies that are responsible for enforcing statutes, regulations and bylaws. In other related laws, such as the Alberta *Freedom of Information and Protection of Privacy Act* (FOIP Act), the term “law enforcement” is defined and has been considered to be limited to activities that involve penalties or sanctions that flow from legislation, as opposed to policies or other informal rules. (For a detailed discussion of what constitutes “law enforcement” under the FOIP Act, see FOIP Bulletin Number 7: *Law Enforcement*, available at www3.gov.ab.ca/foip/guidelines_practices/bulletins/bulletin7.cfm.)

The requestor can also be a “public body.” PIPA has adopted the definition of “public body” from the FOIP Act, section 1(p). Some law enforcement agencies in Alberta are “public bodies” as defined in the FOIP Act. For example, provincial and municipal police services are both public bodies and law enforcement agencies. The RCMP, First Nations’ police services, the Coordinated Law Enforcement Unit (CLEU), and Canada Customs and Revenue Agency are law enforcement agencies in Canada that are not public bodies as defined by Alberta’s FOIP Act. The form provided in Appendix A is designed for law enforcement agencies that are collecting personal information within Alberta, whether or not they are public bodies.

TIP: The Law Enforcement Disclosure Request form requires you to identify your agency as either a law enforcement agency or a “public body” as defined by the FOIP Act. It is recommended that you cite the specific subsection of section 1(p) of the FOIP Act that identifies you as a public body, or attach a copy of the section of the FOIP Act or any other Canadian statute that gives your agency law enforcement powers. This is an extra step, but one that may go a long way to convincing the organization you are an entity that falls within section 20(f).

- **The disclosure must relate to a law enforcement investigation**

“Investigation” is a defined term in section 1(f) of PIPA:

“investigation” means an investigation related to

- (i) a breach of agreement,
- (ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or
- (iii) circumstances or conduct that may result in a remedy or relief being available at law, if the breach, contravention, circumstances or conduct in question has or may have occurred or is likely to occur and it is reasonable to conduct an investigation

An investigation of “a contravention of an enactment of Alberta or Canada or of another province of Canada” (section 1(f)(ii)) is the kind of investigation most likely to fall within the purview of a law enforcement agency. Under the definition of law enforcement discussed above, the contravention must be subject to a penalty or sanction.

TIP: The Law Enforcement Disclosure Request form requires some details. Cite the specific section reference, or enclose a copy of the section of the statute, regulation or bylaw being relied upon. If necessary, additional information can be attached to the form to ensure that your law enforcement agency explains its activities sufficiently to demonstrate that they fall within the requirements of a law enforcement investigation.

The details provided by the law enforcement agency or public body should assist the organization when it determines the reasonableness of the request. At the same time, the details should not exceed what is necessary to establish reasonableness, especially given the possible prejudice to the relationship between the organization and the individual whose information is being requested.

- **The investigation must be undertaken *with a view to a law enforcement proceeding* or be an investigation *from which a law enforcement proceeding is likely to result.***

Law enforcement proceedings are proceedings that lead or could lead to a penalty or sanction under a statute or regulation. These include not only formal court proceedings but also proceedings of adjudicative or administrative tribunals, such as the Labour Relations Board. The penalty or sanction can be imposed by the public body conducting the proceeding or by another body to which the results of the proceedings can be referred.

The matter under investigation must be one that would normally lead to a law enforcement proceeding or there must be some likelihood that the specific investigation will lead to a law enforcement proceeding.

TIP: In some cases it will be clear to an organization that the investigation of an offence is likely to be prosecuted (e.g. a serious contravention of the *Criminal Code*, such as aggravated assault). In other cases, it may be necessary to provide some additional information. For example, a bylaw enforcement officer may need to explain a municipality's policy on the enforcement of bylaws relating to certain offences. A law enforcement agency conducting part of a larger investigation may need to explain the relation between the information requested and the law enforcement proceeding that is likely to result from the larger investigation. It may also be necessary to explain that the individual whose personal information is being requested may not be the subject of the law enforcement proceeding.

Section 20(f) specifically addresses disclosure to law enforcement agencies and public bodies for the purpose of investigations that may result in a law enforcement proceeding. If a law enforcement agency is conducting an investigation that does not meet the requirements of section 20(f), an organization may be able to disclose personal information under another provision of section 20. For example,

- Section 20(b) allows for disclosure if a statute or regulation of Alberta or Canada authorizes or requires the disclosure.
- Section 20(e) permits disclosure for the purpose of complying with a subpoena, warrant, or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information.
- Section 20(m) allows for disclosure if it is reasonable for the purposes of an investigation or legal proceeding.

These provisions are explained in PIPA Information Sheet 2: *Investigations*, available at <http://www.psp.gov.ab.ca/index.cfm?page=resources/Investigations.html> - *Assisting*. The form provided in Appendix A is not suitable for requests under these provisions.

Questions organizations may ask

The disclosure request form provides information about some questions an organization may ask.

Who in the organization is most appropriate to receive a request?

No matter how carefully the form is filled out, it will likely not be well received if the request reaches a person in the organization unfamiliar with the responsibilities or requirements of PIPA.

PIPA requires organizations to designate one or more individuals as responsible for ensuring the organization complies with PIPA (section 5(3)). It is a good idea to go directly to or address your request to this person (or persons) in the organization.

TIP: Phone ahead of time to let the designated person(s) know you will be coming and what you are looking for generally. Explain that you will provide the request in writing. Record the name, title and contact information of the person responsible for PIPA compliance.

The law enforcement agency should also keep a copy of the request form as part of the investigation file. Information received from organizations as a result of the request should be marked by the law enforcement agency or kept separate from the rest of the investigative file, since it could be subject to an exception to disclosure under access and privacy legislation that the law enforcement agency is subject to (in most cases, the FOIP Act).

What information is in the “control” of the organization?

The organization should consider first and foremost whether the personal information requested is within the organization’s control. Section 5(1) states that an organization is responsible for personal information that is in its control. This includes personal information in the custody of organizations providing services for the organization.

If the organization has information in its custody for the purpose of providing services to another organization in Canada, the request for disclosure should normally be referred to that other organization.

Does an organization have any duty to the individual whose personal information is requested?

Because of the sensitive nature of the personal information disclosed and the use the information may be used by a law enforcement agency, the organization should ensure it is disclosing accurate information. If an individual makes an access request to the organization, the organization may be required to disclose the completed form to the individual.

Are there any special provisions for an organization’s personal employee information?

“Personal employee information” is information that is collected, used or disclosed solely for the purposes of establishing, managing or terminating an employment relationship (section 1(j)). Since the disclosure in this case is for the purposes of the law enforcement agency, the information would not be considered personal employee information in this context.

4. Request by an Alberta law enforcement agency to an organization subject to PIPEDA

This section will discuss disclosure of personal information to an Alberta “government institution” that is a law enforcement agency by an organization where the disclosure is governed by PIPEDA.

PIPEDA recognizes an individual’s right to privacy with respect to his or her personal information, but it also provides organizations with the ability to collect, use or disclose personal information that a reasonable person would consider appropriate in the circumstances (section 3).

Schedule 1 of PIPEDA sets out several governing principles that organizations must follow in the handling of personal information. The general rule is that personal information of an individual may be collected only with the knowledge and consent of the individual, except in certain specified circumstances. A further general rule is that personal information must 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.

Sections 7 to 9 of PIPEDA set out exceptions to the general rules contained in Schedule 1. Section 7(3) permits organizations to disclose personal information without the consent of the individual the information is about, and without a warrant or subpoena, under specified circumstances.

Section 7(3)(c.1) is the section that is most likely to apply to law enforcement agencies or government bodies in Alberta and is the section referenced in the form headed “Law Enforcement Disclosure Request – Request by an Alberta Law Enforcement Agency to an Organization Subject to PIPEDA” (Appendix B).

Section 7(3)(c.1) does not limit the ability of an organization to disclose personal information without the consent of the individual for several law enforcement purposes:

7(3) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is

(c.1) made to a government institution or part of a government institution that has made a request for the information, identified its lawful authority to obtain the information and indicated that

- (i) it suspects that the information relates to national security, the defence of Canada or the conduct of international affairs,
- (ii) the disclosure is requested for the purpose of enforcing any law of Canada, a province or a foreign jurisdiction, carrying out an investigation relating to the enforcement of any such law or gathering intelligence for the purpose of enforcing any such law, or
- (iii) the disclosure is requested for the purpose of administering any law of Canada or a province.

This is a discretionary (or “may”) provision, giving the organization the ability to agree to or refuse to disclose the information after evaluating the requirements set out in section 7(3)(c.1). The ability of an organization to exercise discretion to disclose personal information applies

unless another Act that was enacted before PIPEDA, or that is paramount over PIPEDA, prohibits the disclosure of the information (section 4(3)).

In addition, the specific requirements set out in section 7(3)(c.1) must be met to the satisfaction of the organization that has custody or control of the personal information:

- The request must be made by a “government institution” or part of a government institution.
- The lawful authority for the government institution to obtain the information must have been provided.
- The government institution must have indicated that the information relates to national defence or security, the conduct of international affairs, the enforcement or investigation of a law, or the administration of a law of Canada or a province.

Preliminary considerations

The law enforcement agency should provide information that will assist the organization in determining whether the request is reasonable in the circumstances. The type and amount of information requested should be reasonable in relation to the specific investigation or law enforcement matter.

TIPS: The following questions may assist your law enforcement agency when completing the form, and help the organization to decide whether the request is reasonable:

- Is the personal information requested reasonable in scope with respect to the investigation? For example, do you need to request an entire file or some very targeted information from a file? Collect only as much personal information that is reasonable for meeting the stated purpose of the request.
- Will some targeted information under this section assist your agency to take further steps with respect to the investigation – for example, to meet the requirements for a subpoena, warrant or court order that it may be unable to obtain without the information? If this is the case, the law enforcement agency or public body should include some explanation regarding this in the form.

Meeting the requirements of section 7(3)(c.1)

- **The request must be made by a “government institution” or “part of a government institution.”**

The term “government institution” is not defined in PIPEDA. It is reasonable to interpret this phrase to include an institution that is, or is part of, a ministry or department of government, at the federal, provincial or municipal level.

TIP: It may not be evident to an organization receiving a law enforcement disclosure request that your law enforcement agency is a government institution or part of a government institution. Most entities that are governed by some public-sector privacy legislation are likely to be considered government institutions (e.g. many provincial and municipal government agencies, boards and commissions). It may be a good idea to attach a copy of the section of the law that connects your agency with the federal, provincial or municipal government.

You may also consider attaching an organizational chart that identifies your agency within a government ministry or department, or attaching your agency's letterhead or business card if this will help the organization to satisfy itself that your agency is, or is part of, a government institution.

- **The government institution's lawful authority to obtain the information must be provided or identified.**

The form requires, at a minimum, that the agency reference the section number of the statute or regulation that provides the agency with the lawful authority to collect the personal information in the circumstances.

For example, Alberta's *Freedom of Information and Protection of Privacy Act* permits a public body, as defined in that Act, to collect personal information only for purposes designated in section 33. Section 33(b) permits collection of personal information by a public body for the purposes of law enforcement. Section 34(1)(g) of the FOIP Act specifically permits the indirect collection of personal information by a public body for the purposes of law enforcement.

Some statutes provide an agency with specific investigative powers that may include information-gathering powers, as in the case of investigations pursuant to the *Alberta Occupational Health and Safety Act*, or as identified in the duties and powers provided to police officers under section 38(1) of the *Police Act*.

TIP: Include not only the reference to the lawful authority, but also a copy of the statute or law you are relying on as the authority to collect the information.

- **The disclosure request must indicate that one of the following three circumstances applies:**
 - **The government institution suspects that the information relates to national security, the defence of Canada or the conduct of international affairs,**
 - **The disclosure is requested for the purpose of one of the following:**
 - enforcing any law of Canada, a province or a foreign jurisdiction,
 - carrying out an investigation relating to the enforcement of any such law, or
 - gathering intelligence for the purpose of enforcing any such law,
 - **The disclosure is requested for the purpose of administering any law of Canada or a province.**

The agency is required to indicate that one of these circumstances applies, and should indicate which specific circumstance applies to its request for disclosure on the Law Enforcement Disclosure Request. The form allows the agency to check off the box beside the statement that best applies.

It may be appropriate for the agency to provide some details. For example, if the law enforcement agency is investigating a contravention of a law, it could provide the section number of the law. The personal information requested should be clearly connected with the investigation or enforcement of the law cited.

If an access request is made for information disclosed to a law enforcement agency, the organization will be required to provide notice to the government institution, or part thereof, of

the request, and to provide an opportunity for the institution to object to the individual's request pursuant to section 9(2.3). This will be discussed later in this section in relation to documentation of a disclosure and access requests.

There are several sections of PIPEDA that may also apply to law enforcement in section 7(3). See, for example, the following:

- Section 7(3)(c) permits disclosure when required by subpoena, warrant or court order, or an order made by a court, person, or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records.
- Section 7(3)(c.2) addresses disclosures made to government institutions mentioned in section 7 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.
- Section 7(3)(e) addresses disclosure in emergency situations dealing with health or security.
- Section 7(3)(i) covers disclosures that are required by law.

The form provided in Appendix B is not suitable for requests under these provisions.

Questions organizations may ask

The disclosure request form provides information about some questions an organization may ask.

Who in the organization is most appropriate person to receive a request?

No matter how carefully the form is filled out, it is not likely to be well received if the request reaches a person in the organization unfamiliar with the responsibilities or requirements of PIPEDA.

Clause 4.1 of Schedule 1 requires that an organization designate one or more individuals who will be accountable for compliance with PIPEDA (often called the Chief Privacy Officer in larger organizations). It is a good idea to go directly to or address your request to this person (or persons) in the organization.

TIP: Call ahead of time to let the designated person(s) know you will be coming and what you are looking for generally. Explain that you will provide the request in writing. Record the name, title and contact information of the person responsible for PIPEDA compliance.

What information is in the “control” of the organization?

The organization should consider first and foremost whether the personal information requested is within the organization's control. Under clause 4.1.3 of Schedule 1 an organization is responsible for personal information in its possession or custody, including information that has been transferred to a third party for processing.

If the organization has information in its custody for the purpose of providing services to another organization in Canada, the request for disclosure should be referred to that other organization.

Does an organization have any duty to the individual whose personal information is requested?

Because of the sensitive nature of the personal information disclosed and the use the information may be used by a law enforcement agency, the organization should take into consideration when exercising its discretion whether the information is likely to be accurate.

In a 2002 case from the Office of the Privacy Commissioner of Canada (case summary #53), an individual complained about a bank's disclosure of a video surveillance tape to Crime Stoppers and the police in hopes of identifying a suspect who had cashed two allegedly stolen cheques. The complainant had used the same teller station and, because of a technical error with the taping, the video showed the complainant as the individual at the teller station during the time of the alleged offence. The Privacy Commissioner held that the complaint was well-founded, since the bank did not provide accurate information and should have considered the purpose for which the information was going to be used.

How should an organization document the disclosure and respond to an access request?

PIPEDA provides that an individual, upon request, must receive information regarding the existence, use and disclosure of the individual's own personal information and access to that personal information (Schedule 1, Clause 4.9). This clause also provides for exceptions to this right of access.

Section 9 of PIPEDA sets out situations when an individual's right of access to his or her own personal information is either prohibited or may be limited. Section 9(2.1) to (2.4) concerns the right of access to information disclosed in accordance with section 7(3). These provisions set out the requirements and procedures regarding notice to the government institution to which the information was disclosed, as well as the requirements that the government institution must meet in order to object to the organization's complying with the access request. The government institution has thirty days to respond to the notice.

Since PIPEDA provides these notification and objection procedures (section 9(2.2) and (2.3)), it is important for the government institution to provide accurate contact information to the organization. The organization can deny access, either in whole or in part, to information if the government institution or part of the institution objects to the disclosure under section 9(2.4) or any of the other applicable discretionary exceptions listed in section 9(3) or (4) of PIPEDA.

This document was prepared to assist law enforcement agencies in collecting personal information for investigations from organizations subject to Alberta's *Personal Information Protection Act* or the federal *Personal Information Protection and Electronic Documents Act*. It is not intended as, nor is a substitute for, legal advice. The appended forms are designed to cover only the most straightforward situations. Law enforcement agencies should consult with their legal counsel before adopting these forms. Neither the guidelines nor the forms have received any official sanction from the Office of the Information and Privacy Commissioner of Alberta or the federal Office of the Privacy Commissioner of Canada.

Appendix A

Law Enforcement Disclosure Request

Request by a Law Enforcement Agency in Alberta to an Organization Subject to PIPA

Note: This form includes a notice in the footer of page 1 that is appropriate for a law enforcement agency subject to Alberta's *Freedom of Information and Protection of Privacy Act*. A law enforcement agency to which federal privacy legislation applies may adapt the notice to address its own legislation.

LAW ENFORCEMENT DISCLOSURE REQUEST

Request by a Law Enforcement Agency in Alberta to an Organization Subject to PIPA

SEE BACK OF FORM FOR INSTRUCTIONS

In accordance with section 20(f) of the *Personal Information Protection Act* (PIPA), a business or organization may disclose personal information without the consent of the individual if:

- (f) *the disclosure of the information is to a public body or a law enforcement agency in Canada to assist in an investigation*
 - (i) *undertaken with a view to a law enforcement proceeding, or*
 - (ii) *from which a law enforcement proceeding is likely to result.*

Line 1 – Name of the public body or law enforcement agency in Canada

requests disclosure of personal information pertaining to

Line 2 – Name of individual or other identifier

from the following organization:

Line 3 – Name of organization (within the meaning of section 1(i) of PIPA)

that may be generally described as:

Line 4 – Description of information requested

The personal information is requested for the purpose of a law enforcement investigation relating to a contravention of an enactment of Alberta or Canada or of another province of Canada. Details are as follows:

Line 5 – Federal/ provincial law, bylaw; section reference(s) (if appropriate); additional information to establish investigation is reasonable

The law enforcement agency named in Line 1 is authorized to collect this personal information under the following law:

Line 6 – Section of federal or provincial statute that authorizes collection of personal information

Submitted to the organization named above on the _____ day of _____, 20____, by:

Name

Title

Signature

Identifying number (if applicable) and contact information

TO BE COMPLETED BY BUSINESS OR ORGANIZATION

I, _____, of the organization named above **consent to** or, **refuse**
Printed name
this disclosure of personal information on the _____ day of _____, 20____.

Signature

Title and contact information

NOTE: This completed form may qualify for an exception to disclosure under section 20 of the *Freedom of Information and Protection of Privacy Act* (in the case of the law enforcement agency requesting the information).

LAW ENFORCEMENT DISCLOSURE REQUEST

Information for the Organization Receiving this Form

This form is intended for the collection of personal information from organizations subject to Alberta's *Personal Information Protection Act* (PIPA) by law enforcement agencies in Alberta. The following explanations and tips may assist your organization in assessing the request and responding to it.

Is your organization governed by PIPA?

PIPA governs the collection, use and disclosure of personal information within Alberta by provincially regulated organizations. The Act does not apply to:

- federally regulated organizations (e.g. banks, telecommunications companies),
- disclosure of personal information outside Alberta,
- personal information to which the *Freedom of Information and Protection of Privacy Act* applies, such as personal information that an organization has in its custody for the purpose of providing services for a public body,
- personal information to which Alberta's *Health Information Act* applies.

Who in the organization is most appropriate person to receive a request?

PIPA requires that an organization designate one or more individuals who will be accountable for compliance with the Act (section 5(3)). It is a good idea to have this form go directly to this person (or persons) in your organization.

Can an organization disclose personal information without a court order or subpoena?

An organization subject to PIPA can normally collect, use or disclose personal information only with the consent of the individual the information is about. Section 20(f) of PIPA allows organizations to disclose personal information *without* the consent of the individual for the purposes of law enforcement and to do so *without* a court order or subpoena. This request form is for use in cases where a Canadian law enforcement agency operating in Alberta believes that PIPA applies to the information and section 20(f) permits disclosure to the law enforcement agency.

What things should an organization look for when deciding whether to disclose the personal information requested on this form?

Section 20(f) is discretionary. The organization can agree or refuse to disclose the requested personal information on the basis of an assessment of the requirements of section 20(f). The organization should assess whether the request meets the following criteria.

- **Line 1 – The request must be made by a public body or a law enforcement agency in Canada.**

An organization can disclose personal information to a law enforcement agency operating in Alberta, such as Edmonton Police Service or RCMP "K" Division. An organization can also disclose to a public body

that is responsible for law enforcement, as defined in Alberta's *Freedom of Information and Protection of Privacy Act*, such as Alberta Justice. The person requesting information should provide evidence that he or she is representing a body to which an organization is authorized to disclose personal information under section 20(f) of PIPA (the evidence may be a law, a business card, letterhead or organizational chart).

- **Lines 2 and 4 – The organization needs to have control of the requested personal information.**

Your organization is responsible for personal information under its control, including information in its custody and information that is in the custody of another organization providing services for your organization. If the information requested is in your custody, but not within your control (e.g. because you have collected the information on behalf of another organization), you should consult with the other organization before disclosing the information.

- **Line 5 – The investigation must relate to a law enforcement investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.**

The law enforcement agency must provide the section number(s) of the law that has been contravened and the related offence and penalty provisions. A copy of the law may also be attached.

Consider whether disclosure of the type and amount of personal information requested (Line 4) is reasonable for the investigation as described.

- **Line 6 – The law enforcement agency should identify its legal authority to collect the personal information.**

The law enforcement agency should provide the section number of the statute that authorizes collection of the personal information in the circumstances. A copy of the law may also be attached. For example, section 33(b) of Alberta's *Freedom of Information and Protection of Privacy Act* permits a law enforcement agency subject to that Act to collect personal information for the purposes of law enforcement.

What should the organization record in its file if a disclosure is made?

PIPA provides individuals with the right to know what information an organization has about them and how that information has been used and disclosed. If the individual referred to in this disclosure request makes an access request to your organization, the organization may be required to disclose the completed form to the individual. If the investigation is likely to be ongoing, your organization may wish to consult with the law enforcement agency before disclosing this form to the individual.

Appendix B

Law Enforcement Disclosure Request

Request by an Alberta Law Enforcement Agency to an Organization Subject to PIPEDA

LAW ENFORCEMENT DISCLOSURE REQUEST

Request by an Alberta Law Enforcement Agency to an Organization Subject to PIPEDA

SEE BACK OF FORM FOR INSTRUCTIONS

In accordance with section 7(3)(c.1) of the *Personal Information Protection and Electronic Documents Act* (PIPEDA),

Line 1 - Name of government institution or part of a government institution

requests disclosure of personal information pertaining to

Line 2 - Name of individual or other identifier

from the following organization:

Line 3 - Name of organization (within the meaning of section 2(1) and section 4 of PIPEDA)

that may be generally described as:

Line 4 - General description of information requested

The government institution identified in Line 1 is able to collect this information pursuant to the following legal authority:

Line 5 - Section of provincial or federal statute that authorizes collection of personal information

This disclosure request is made for one or more of the following purposes:

- The government institution suspects that the information relates to national security, the defence of Canada or the conduct of international affairs,
- The disclosure is requested for the purpose of enforcing a law of Canada, a province or a foreign jurisdiction, carrying out an investigation relating to the enforcement of the law or gathering intelligence for the purpose of enforcing the law, or
- The disclosure is requested for the purpose of administering a law of Canada or a province.

Additional information concerning the purpose indicated above, if appropriate, is as follows (if further space is required, provide attachment and identify the attachment below):

Line 6 – Additional section reference(s) (federal/provincial statute, local public body bylaw), description of breach, investigation or relevant circumstances.

Submitted to the organization named above on the ____ day of _____, 20____, by the following:

Name

Title

Signature

Identifying Number (if applicable) and Contact Information

TO BE COMPLETED BY ORGANIZATION:

I, _____, of the organization named above **agree to** or, **refuse this**
Printed name
disclosure of personal information on the ____ day of _____, 20____.

Signature

Title and Contact Information

NOTE: This completed form may qualify for an exception to disclosure under section 20 of the *Freedom of Information and Protection of Privacy Act* (in the case of the law enforcement agency requesting the information) or section 9 of the *Personal Information Protection and Electronic Documents Act* (in the case of the organization from which the information is requested).

LAW ENFORCEMENT DISCLOSURE REQUEST
Information for the Organization Receiving this Form

This form has been designed to assist a “government institution” that is an Alberta law enforcement agency (e.g. a police service) to collect personal information from an “organization” that is subject to the federal **Personal Information Protection and Electronic Documents Act (PIPEDA)**. The following are some explanations and tips to assist your organization in assessing the request and responding to it.

Is your organization governed by PIPEDA?

PIPEDA governs federal works, undertakings and businesses (e.g. banks, telecommunications companies), as well as organizations engaged in commercial activities where personal information crosses provincial borders. If an Alberta law enforcement agency is requesting disclosure of personal information and your organization

- is a federal work, undertaking or business, or
- is engaged in commercial activities and the requested personal information is outside Alberta,

disclosure of the personal information requested in this form is likely subject to PIPEDA.

Who in the organization should receive this request?

PIPEDA requires that an organization designate one or more individuals who will be accountable for compliance with PIPEDA (Schedule 1, Clause 4.1). It is a good idea to have this form go directly to this person (or persons) in the organization.

Can an organization disclose personal information without a court order or subpoena?

Personal information can usually be collected, used or disclosed only with the knowledge and consent of the individual the information is about, except when PIPEDA provides otherwise. Section 7(3)(c.1) of PIPEDA does not prohibit organizations from disclosing personal information *without* the consent of the individual for the purposes of law enforcement and doing so *without* a court order or subpoena. This form is for use in cases where an Alberta law enforcement agency believes that PIPEDA applies to the information and the disclosure to the Alberta law enforcement agency falls within section 7(3)(c.1).

What things should an organization look for when deciding whether to disclose the personal information requested on this form?

Section 7(3)(c.1) is discretionary. This means the organization can agree or refuse to disclose the requested personal information on the basis of an assessment of the requirements of section 7(3)(c.1), provided that no other federal Act prohibits disclosure. The organization should assess whether the request meets the following criteria.

- **Line 1 – The request must be made by a “government institution” or part of a government institution.**

It is reasonable to interpret the phrase “government institution” to include any body that is a government, a ministry or a department of government, or part thereof, at the federal, provincial or municipal level. The law enforcement agency requesting information should provide some evidence that it is a government institution

or part of a government institution (such as a law, a business card, letterhead or organizational chart).

- **Lines 2 and 4 – The organization needs to have custody or control of the requested personal information.**

An organization is responsible for personal information under its control, including information in its possession and information that has been transferred to a third party for processing (Schedule 1, clause 4.1.3).

If the information requested is in your custody, but not within your control (e.g. because you have collected the information on behalf of another organization), you should consult with the other organization before disclosing the information.

- **Line 5 – The lawful authority for collection of the personal information must be identified.**

The law enforcement agency must reference the section number of the statute that provides the lawful authority to collect the personal information in the circumstances. A copy of the law may also be attached. For example, section 33(b) of Alberta’s *Freedom of Information and Protection of Privacy Act* permits a law enforcement agency that is subject to that Act to collect personal information for the purposes of law enforcement.

- **Lines 4 and 6 – The requested information (Line 4) must relate to one of the purposes listed in the checkboxes (section 7(3)(c.1) of PIPEDA).**

The law enforcement agency must indicate that the request relates to one of the purposes listed in the checkboxes. The agency should identify the purpose of the disclosure request and may provide details of purposes, unless there is particular sensitivity about the law enforcement matter or the personal information concerned. The personal information requested should be reasonably connected with the stated purpose and with the subject matter of the law cited. Review Lines 4 and 6 and the stated purpose of the request. Consider whether disclosure of the type and amount of information requested is reasonable for the stated purpose.

What should the organization record in its file if a disclosure is made?

PIPEDA provides individuals with the right to know what information an organization has about them and how that information has been used and disclosed. However, certain information disclosed under section 7(3)(c.1) can be excepted from disclosure (section 9).

If the individual referred to in this disclosure request makes an access request to your organization, the organization will be required to notify the law enforcement agency to which it disclosed the personal information. The law enforcement agency has the right under PIPEDA to object to your organization’s disclosing information about this request. Record the contact information of the requester in case your organization is obliged to notify the law enforcement agency about an access request. Keep this form and details of the disclosure separate from the rest of the individual’s information and mark this information as being the subject of a request under section 7(3)(c.1).