

# You Raise the Issue

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The concept of privacy legislation became headline news across Canada this past summer when news broke of the Federal Privacy Commissioner's extravagant dining and lodging expenses and allegedly tyrannical management of employees. While the Federal Privacy Commissioner's office continues the struggle to recover from this scandal and regain credibility, Alberta's Privacy Commissioner is gearing up for the expected implementation of the Alberta *Personal Information Protection Act* ("PIPA") on January 1, 2004.

Privacy legislation is not a new concept in Alberta. Many organizations are already subject to privacy legislation and the governing principles are well established. Public sector organizations are governed by the *Freedom of Information and Protection of Privacy Act* ("FOIPP"), federally regulated organizations are subject to the *Personal Information and Protection of Electronic Documents Act* ("PIPEDA") and the *Health Information Act* ("HIA") governs the collection of health information. PIPA will apply to private sector organizations and complete the overall objective of ensuring that organizations in Alberta control the collection, use and disclosure of personal information in a manner that balances the rights of the individual with the needs of the organization.

## Fair Information Principles

Privacy legislation is based on the following fair information principles set out in a Schedule to PIPEDA:

1. **Accountability:** An organization is responsible for personal information under its control and shall designate an individual or group within the organization who is accountable for compliance with the following principles:
2. **Identifying Purposes:** Organization shall identify the purpose for which personal information is collected at or before it is collected;
3. **Consent:** The knowledge and consent of individuals are required for the collection, use or disclosure of personal information, except where inappropriate;
4. **Limiting Collection:** The collection of information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means;
5. **Limiting Use, Disclosure and Retention:** Personal information is not to be used or disclosed for purposes other than those for which it was collected, except with consent or as required by law. Personal information shall only be retained as long as necessary for the fulfillment of the purpose for which it was collected.
6. **Accuracy:** Personal information shall be as accurate, complete and up-to-date as necessary for the purposes for which it is to be used.
7. **Safeguards:** Personal information shall be protected by appropriate security safeguards.

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8. **Openness:** An organization shall make its policies and practices relating to the management of personal information readily available.

9. **Individual Access:** Upon request, an individual shall be informed of the existence, use and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

10. **Challenging compliance:** An individual shall be able to address a challenge to the individual or group within the organization responsible for compliance with the legislation.

**Business Exception: Sale or Transfer**

Every organization will need to be aware of all the information it has with respect to its employees, customers, shareholders, officers and directors. Most organizations will be required to make significant changes in their collection, use and disclosure of personal information but there are some important exceptions when consent will not be required. For example, in the case of the sale, lease or transfer of an organization's business assets personal information can be disclosed without consent if:

1. the information is necessary for the parties to determine whether to proceed with the transaction or for the purposes of completing the transaction, and
2. the parties have entered into an agreement that limits the use of the personal information for purposes related to the transaction.

If the transaction is not completed, the personal information must be destroyed or returned to the party that disclosed the information. PIPEDA does not contain such an exemption and there is the potential for conflict if one organization in the proposed sale or transfer is governed by PIPEDA and one is governed by PIPA.

**Resources**

The full implications of *PIPA* will not be known for years and it is expected that this issue will continue to make news. The effective date of the proposed legislation is fast-approaching and it is important for organizations to examine current practices, identify potential problems and implement a plan for compliance effective January 1, 2004. The assistance of privacy consultants and legal counsel is recommended. Information can also be obtained from:

- Office of the Information and Privacy Commissioner  
[www.oipc.ab.ca](http://www.oipc.ab.ca)
- Information Management, Access & Privacy Branch,  
[www.psp.gov.ab.ca](http://www.psp.gov.ab.ca)
- Privacy Commissioner of Canada at  
[www.privcom.gc.ca](http://www.privcom.gc.ca)

**DISCLAIMER** this article should not be interpreted as providing legal advice. Consult your legal adviser before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to:

The Labour and Employment Group  
Edmonton 780-423-3003  
Calgary 403-260-8500

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