



Privacy Guidelines For Landlords and Tenants

Purpose of the Guidelines

In British Columbia, landlords and property managers acting on their behalf must adhere to the privacy rules contained in the BC *Personal Information Protection Act* (“PIPA”).

These guidelines are intended to assist landlords and property managers in discharging their duties under the *Residential Tenancy Act* (“RTA”) in a manner that respects the privacy of tenants and promotes transparency in the operation of landlord and tenant relationships. In this document, the word “tenant” includes a prospective tenant.

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FREQUENTLY ASKED QUESTIONS

A. INTRODUCTION

1. Are landlords in British Columbia bound by PIPA?

Yes. The *Personal Information Protection Act* (“PIPA”) applies to a person, a corporation and an unincorporated association, but does not apply to an individual acting in a personal or domestic capacity. PIPA applies to owners renting their property regardless of whether a person owns one secondary suite, one condominium unit or several apartments.

PIPA also applies to strata councils for condominium buildings and property management companies. Please also refer to our “Privacy and Access Guidelines for Strata Corporations and Property Managers”, which can be found on our website: www.oipc.bc.ca

2. Are tenants in British Columbia governed by PIPA?

No. Residential tenants are not bound PIPA. PIPA only applies to how organizations collect, use, store, protect and disclose personal information of private citizens.

3. What is personal information?

PIPA defines personal information as “information about an identifiable individual and includes employee personal information ...”. This can mean any number of things such as a name, date of birth, phone number, address, height, weight, eye colour, social insurance number (“SIN”), driver’s licence number, banking information, income, photograph, etc.

4. What are a landlord’s responsibilities under PIPA?

PIPA governs how landlords collect, use and disclose personal information of their tenants. Generally, this means obtaining a tenant’s consent and having a reasonable purpose for the collection, use and disclosure of personal information.

Landlords must notify tenants of their purpose for the collection of personal information. A landlord must also protect tenant information in the landlord’s custody or control by adopting safeguards to prevent unauthorized access, use, disclosure, loss, destruction, copying or modification.

A landlord must respond to a tenant’s request for access to their personal information by providing the tenant with copies of records in the landlord’s possession or control that contain the tenant’s personal information. Upon request, a landlord must also tell the tenant how their personal information has been used and to whom it has been disclosed. However, the landlord must not disclose someone else’s personal information to the tenant. Landlords are also required to familiarize themselves with PIPA and to adopt policies and procedures to ensure their compliance to it.

In this guide, you will often see the word “reasonable” used. “Reasonableness” is an important principle of PIPA and is defined in section 2 of PIPA as “what a reasonable person would consider appropriate in the circumstances”.

B. CONSENT

5. When does a landlord need to obtain a tenant’s consent?

In most circumstances, a landlord needs a tenant’s consent to collect, use or disclose the tenant’s personal information. Once landlords collect personal information, they can only use it for the original purpose expressed to their tenants. If a landlord wants to use or disclose the information for a new, unstated purpose, the landlord will require a new consent from the tenant. There are a few instances where consent is not required, as discussed below. Consent to collect, use or disclose personal information should always be obtained directly from the individual.

6. Does a landlord always have to ask for written or express consent from a tenant?

Not always. PIPA also recognizes verbal or implied consent as acceptable forms of consent. Implied consent arises where personal information is volunteered by someone in circumstances in which the purpose for the collection, use or disclosure would be considered obvious to a reasonable person. For example, when a tenant provides his or her cellular telephone number so that he or she can be contacted, if necessary, while he or she is away on holidays.

PIPA also recognizes opt-out consent where landlords provide notice of their intention to collect, use, or disclose a tenant’s personal information and the purpose for doing so. The notice must give tenants an opportunity to decline or object. Consent is deemed to be given if the tenant does not respond to the notice within a reasonable amount of time.

Landlords should consider the sensitivity of the personal information in question when determining the form of consent to obtain. Landlords should consider getting express, written consent when collecting sensitive personal information such as financial information or references wherever practicable. This will reduce the chances of a misunderstanding or a complaint under PIPA.

There are instances where the landlord has discretion **not** to obtain a tenant’s consent to collect, use, or disclose the tenant’s personal information, e.g., if another law—such as the *Residential Tenancy Act*—requires the collection, or in response to a warrant or subpoena, for a law enforcement investigation or a civil proceeding. Although there are circumstances where consent is not required, there is nothing to prevent a landlord from notifying a tenant as a reasonable courtesy.

An Example of Implied Consent: A landlord decides to issue parking stalls to tenants. The landlord needs their vehicle plate numbers for this purpose, which is a reasonable collection of personal information. The landlord posts a notice asking interested tenants to contact him or her if they want a parking stall.

7. Can a tenant refuse to give consent?

A tenant may refuse to provide information or give consent to a landlord when the information is not reasonably required to establish or manage the tenancy. For example, a landlord would not need to know a tenant's educational background to manage the tenancy and the tenant may refuse to provide it.

Certain information is necessary and reasonable for a landlord to rent property to a tenant and failing to provide that information could affect a tenant's eligibility to rent property. For example, a landlord may need to collect a tenant's contact information including work and home telephone numbers. A landlord cannot, as a condition of renting or providing any service to a tenant, ask for consent to collect, use or disclose personal information beyond what is necessary to provide tenancy or any service.

8. Can a tenant withdraw consent already given for a landlord to collect, use or disclose personal information?

In some circumstances, a tenant may withdraw or vary consent by giving notice to a landlord. The landlord must explain to a tenant the consequences of withdrawing or varying consent, unless it would be reasonably obvious. This may include not offering tenancy to an applicant. The landlord must then cease to collect, use or disclose the personal information or abide by the variation of consent. However, an individual may not withdraw consent if doing so would frustrate the performance of a legal obligation, including the tenancy agreement.

C. COLLECTING PERSONAL INFORMATION

9. What personal information can landlords request from prospective tenants?

A landlord may request only the information reasonably necessary to make a decision about whether or not to rent property to the applicant. This may include reasonable proof that a tenant is capable of paying rent or references from another landlord. A landlord would also need information in order to contact the tenant to give his or her decision about the application.

A landlord can request more detailed information beyond this, but the tenant may refuse if it is not reasonable for the rental transaction. The landlord must be prepared to provide an explanation as to why the information is required at this stage. Personal information that is not required until the application for tenancy has been accepted should only be collected once the tenancy agreement is finalized. For example, a landlord would not need car licence information, in order to provide a

parking permit, from a prospective tenant. This information may be required after a tenancy agreement has been signed.

10. What personal information can landlords request from tenants?

It may be reasonable for a landlord to request more detailed information once an individual becomes a tenant. For example, a landlord may need a record of tenant vehicle plate numbers to ensure that unauthorized vehicles are not parked illegally. Personal information requested by a landlord must always be reasonably connected to tenancy. A health card number, for example, is not reasonably connected to a tenancy and should therefore not be required.

Again, a landlord must have a reasonable purpose for requesting personal information and must disclose the purpose to the tenant. In the event that a tenant is still concerned about the type of information being requested, he or she can ask the landlord why it is required. If the tenant is still concerned about disclosing it, an alternative form of satisfying the landlord's need should be considered. A landlord must provide tenants with clear contact information so that if any privacy questions arise, tenants can reach the landlord to address these questions.

ADVICE FOR LANDLORDS:

Landlords should examine each application question to ensure that there is a business need for collecting that information. If information is not needed, do not collect it. Remember, in the event information is required later, it can be collected at the time it is actually necessary.

A landlord should preface a tenancy application with verbal or written statements about why personal information is being collected, especially when the purpose for collecting a particular piece of information is not obvious. Landlords who demonstrate respect for tenant privacy are not only taking their statutory duties seriously, they are also fostering goodwill with tenants. The landlord has redress through the *Residential Tenancy Act*, so that excessive collection of personal information should not be viewed as the sole solution for protection from property damage.

11. Can a landlord ask for personal information about a tenant's references or emergency contacts?

Yes, a landlord who wishes to have an emergency contact number if something happens to the tenant, or wishes to contact other landlords for a reference may collect the information with the tenant's consent.

The personal information exchanged between landlords about prospective/past tenants must be confined to information related to the prospective tenant's suitability as a tenant, such as rental and payment history. If a tenant refuses to provide references, and this affects the landlord's ability to make a decision about granting tenancy, it would be reasonable to decline to process the application further.

12. Can a landlord ask for a tenant’s pay-slip or T4?

If a landlord has legitimate concerns about a tenant’s ability to make regular payment of rent, then it may be reasonable for the landlord to request proof of financial capacity from the tenant. A tenant should be able to provide one of any number of documents that reasonably confirm income, such as a letter from the tenant’s employer. Tenants may consider removing information from the form that the landlord does not require, such as their social insurance number. In cases where subsidized-housing rent payments are based on income, it is not unreasonable for a landlord to request sufficiently detailed proof of income and expenses, but the landlord should only collect personal information that is necessary.

13. Can a landlord request a credit report from a tenant?

A landlord must have a reasonable purpose for doing so and communicate that to the tenant. If the landlord has concerns about non-payment of rent and therefore must verify an applicant’s credit history, this may be a reasonable practice. Pursuant to both the *Business Practices and Consumer Protection Act* and PIPA, a landlord must obtain the tenant’s consent before ordering a credit report.

14. Can a landlord ask for a tenant’s Social Insurance Number (“SIN”)?

A SIN is a unique identification number created by federal law for administering particular national laws and programs. The OIPC recommends that individuals avoid disclosing it except when required by law for tax purposes or to obtain government services. It is not necessary for a landlord to request a tenant’s SIN in order to complete a credit check. All that is required is the tenant’s full name, date of birth and current address. Therefore, landlords should not require that tenants provide their SIN on either tenancy application forms or rental agreements.

ADVICE FOR LANDLORDS:

A landlord who has long struggled with non-paying tenants decides to ask all tenancy applicants for consent to obtain credit reports. He asks for a SIN for this purpose. He explains his purpose for collecting this information. While some applicants do not object, one applicant states that he does not give out his SIN to anyone except where required by law. The landlord and applicant agree that the tenant will give his date of birth and middle name to the landlord to order the credit report. The landlord advises the applicant that more than one person with the same name and date of birth could still appear on the credit report. The applicant states that if this does occur, he will obtain the credit report himself and provide it to the landlord.

15. Can a landlord ask to see a tenant’s identification?

Yes. Typically, a landlord’s purpose for requesting to examine identification is simply to verify a tenant’s identity when entering into a rental or tenancy agreement and such a requirement is reasonable. Given that a landlord must be able to properly identify a tenant in the event that damage is caused to the property, an emergency occurs, or the

tenant does not honour the lease, it may be reasonable to authenticate a tenant's identity.

16. Can a landlord ask for a tenant's driver's licence number or photocopy the licence?

A landlord may not collect, copy or use a person's driver's licence information because it is not necessary in order to consider a prospective tenant's rental application. A landlord may not refuse the application of a tenant who refuses to provide his or her driver's licence. A landlord may ask to examine a person's driver's licence in order to verify the person's identity. However, the landlord must not write down or photocopy this personal information. Please refer to the "Collection of Driver's Licence Numbers under Private Sector Privacy Legislation – A Guide for Retailers", which can be found on our website: www.oipc.bc.ca.

17. Can a landlord require a tenant's banking information?

A landlord should not demand a tenant's banking information. A landlord must be able to collect rent money and may do so in numerous ways: cash, a personal cheque, money order, pre-authorized payment, internet deposit or even a credit card. While a personal cheque displays banking information required to honour the cheque, the landlord should not use it for any other purpose.

18. Can a landlord ask to see a copy of a tenant's insurance policy?

Contents insurance may be a necessary requirement for renting a property. A landlord is responsible for having a purpose for requesting this information and explaining it to the tenant. If, for example, the landlord must satisfy his or her own insurance company that tenants have contents insurance, then it may be reasonable to require some proof.

19. Can a landlord request a tenant's credit card number?

A landlord cannot request a tenant's credit card information as a condition of renting a property. Obviously if the parties agree to process rent payments by credit card, a tenant would consent and supply his or her credit card number to the landlord.

20. Can a landlord request to check a tenant's criminal record?

No, a landlord cannot as a condition of renting or providing any service to a tenant, ask for consent to collect personal information beyond what is necessary to provide tenancy or that service. Requiring a criminal records check is not reasonably necessary.

21. Can a landlord ask for a tenant's roommate's personal information?

Although only the tenant on the tenancy agreement is responsible for payment of rent and damages, it is reasonable for a landlord to document the names of people living on their property, but it is not necessary for each roommate to provide their banking information or other personal information.

22. Can a landlord install video equipment in a lobby or other public areas?

Yes, but only for reasonable purposes such as to address real security concerns. There must be adequate notice and signs warning tenants and visitors that the premises are being monitored by a video surveillance system for security purposes. The video should not be used or disclosed for other purposes. The video camera should be set up to strategically capture security breaches. The landlord should also only keep the video footage for the minimum amount of time required, and ensure that unauthorized parties cannot access it. Please also refer to Order P09-02 Shoal Point Strata Council and our “Privacy Guidelines for Strata Corporations and Strata Agents”, both of which can be found on our website: www.oipc.bc.ca.

ADVICE FOR LANDLORDS:

A landlord experiences a number of thefts and attempted break-ins. The landlord decides to install security cameras in strategic, public locations around the building. He or she obtains a video system which records over itself every seven days so that he or she doesn't have to worry about storing the footage. The video recorder is stored in a locked cabinet for which only he or she and his or her property manager have a key. The video is only examined if a crime or similar incident has occurred. It is only disclosed to police. The landlord distributes a notice to his or her tenants outlining the upcoming installation of equipment and all of the above information. He or she then posts signs around the building explaining there is video surveillance for security reasons and concerns may be brought to the manager's attention.

D. USING PERSONAL INFORMATION

23. How can a landlord use the personal information collected about tenants?

A landlord may only use tenants' personal information for the purposes it was initially collected, as described to the tenant. If the landlord wants to use the information for another purpose, he or she must seek the consent of the tenant. The new purpose must still be reasonable.

There are certain circumstances under which the landlord would not need consent, such as, if it is clearly in the interests of the tenant and timely consent cannot be obtained, if another statute or regulation requires it, for a legal proceeding, in an emergency, or to collect a debt.

24. Can a landlord use a tenant's personal information to collect an unpaid debt?

Yes, once a tenant's account is in arrears, PIPA permits the landlord's use of personal information without consent for the purposes of collecting a debt, including unpaid rent, fees and utilities, costs to repair damage caused by the tenant or monies ordered to be paid by the tenant by a dispute resolution officer. The landlord must still use the information only to the extent that is reasonable.

E. DISCLOSING PERSONAL INFORMATION

25. To whom can a landlord disclose a tenant's personal information?

Generally, landlords require tenants' consent to disclose their personal information. PIPA specifies where consent is not required to disclose personal information, including in the following circumstances:

- where it is clearly in the interests of the tenant and timely consent cannot be obtained (for example a health emergency situation where the ambulance attendant requires personal information about the victim),
- disclosure is required by another statute or regulation,
- disclosure is to a public body, which is authorized by law to collect it,
- in response to a court order, warrant or subpoena,
- for law enforcement purposes,
- in an emergency,
- to next of kin in the event of death, and
- where disclosure is necessary for the landlord to collect a debt owed to him or her by the tenant.

Even in the above circumstances, the disclosure must be limited to what is necessary (i.e., disclose only the information necessary for the specific purpose). The landlord should always be satisfied that the disclosure is lawful and that the person requesting the information has a reasonable need for it. A landlord should record instances where disclosure has occurred, because tenants have a right to be told to whom their personal information has been disclosed and why. See Advice for Landlords section below.

26. Can a landlord disclose a tenant's personal information to a collection agency collecting a non-rent related debt or for other reasons?

No. A landlord must have a tenant's consent to disclose information about the tenant to a collection agency collecting a debt on behalf of an organization other than the landlord. Even with consent, a landlord should ensure that only information necessary for the debt collection is disclosed.

Landlords may receive requests for a tenant's personal information from federal, provincial or municipal government agencies or law enforcement agencies such as the police. If a landlord is asked to disclose personal information to a public body or a law enforcement agency without a warrant, subpoena or court order, the landlord must satisfy herself or himself that the request is a bona fide request in aid of an investigation in considering whether or not to disclose the information. The landlord needs to confirm that the disclosure is to a public body or a law enforcement agency in Canada, which concerns an offence under Canadian laws, and which would assist in their investigation or making a decision whether or not to undertake an investigation. The disclosure of

personal information should assist the public bodies in determining whether the offence has taken place or whether charges should be laid or the offence should be prosecuted.

If a public body or law enforcement agency makes an oral request to a landlord for a tenant's personal information, it is advisable that the landlord request that the agency put its demand in writing, set out its statutory authority for making the request and provide the agency's internal file number. For example, the police may request access to a video surveillance tape or to access records for their investigation into a criminal act.

27. Can a landlord disclose one tenant's personal information to another tenant without consent?

No. Generally PIPA requires that landlords obtain the consent of their tenants before disclosing personal information to other tenants. There may be instances, such as in a serious emergency, where this would be permissible. Landlords should make every effort to protect the privacy of their tenants and prevent disclosure of their personal information.

ADVICE FOR LANDLORDS: A landlord keeps a log sheet in each of his or her tenant's files. On the log sheets, he or she records each time any personal information was disclosed to another party, with and without the consent of the tenant. He or she records what information was disclosed, to whom the information was disclosed, when and why it was disclosed (i.e., his or her authority to disclose). When one of his or her tenants submits a request to access his or her personal information, he or she attaches a copy of his or her log sheet for the tenant. He or she keeps all of his or her tenants' files in a locked filing cabinet in his or her office and shreds the files once no longer needed.

28. Can a landlord post notices containing personal information on a tenant's door?

Yes, however, the landlord must first make reasonable attempts to deliver the information personally. According to PIPA, an organization may disclose personal information if it is authorized to do so by law. Since section 88 of the *Residential Tenancy Act* allows landlords to post certain notices to tenants "by attaching a copy to a door or other conspicuous place at the address at which the person resides", this is permissible under PIPA. The types of notices that a landlord may post include: termination of tenancy, notice to enter and notice of a rental increase.

A landlord should always act reasonably, include a minimal amount of personal information on these notices and ensure that posting the notice is necessary. If the tenant is evading the landlord or the tenant is habitually unavailable, posting a notice may be necessary, but the information should be placed in an envelope.

29. Is it reasonable for the mailboxes or entry buzzers in an apartment building to have tenants' names on them?

If the landlord has a tenant's consent, then it is reasonable. For example, a landlord wants to put the names of tenants on the lobby mailboxes and buzzer panel. He or she asks tenants for their consent since this represents a use and disclosure of names for a new purpose. In future, he or she decides he or she will put a checkbox on the tenancy agreements for new tenants to indicate their desire to have their names posted in this way. The landlord simply prints "occupant" for those who do not consent.

30. Can a landlord distribute a tenant phone list to tenants?

A landlord should not disclose tenants' phone numbers without obtaining their prior consent, especially since some of the numbers may be unlisted.

ADVICE FOR LANDLORDS:

Unless a landlord has obtained the informed written consent of a tenant, a landlord should not maintain, use, contribute towards or disclose a person's presence on a "Bad Tenant" list or "Eviction List" or similar database.

F. SECURITY OF PERSONAL INFORMATION

31. How should a landlord store tenants' personal information?

Landlords must make reasonable efforts to secure personal information to prevent unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction. A landlord should ensure that the information is locked in a filing cabinet in a locked room that is inaccessible to unauthorized parties, such as cleaning staff or administrative staff that have no need to access it, or is stored on an encrypted computer or secure server with robust security protection.

32. How long should a landlord keep tenants' personal information?

If the landlord uses the tenant's personal information to make a decision that directly affects the tenant, the landlord must retain that information for at least one year after using it so that the tenant has a reasonable opportunity to obtain access to it. This also applies to personal information of an individual, who applied for a tenancy but was unsuccessful.

If no decision about the tenant is made or a year has passed, a landlord should keep the information only for as long it is actually needed (i.e., legal or business purposes). A landlord should not simply dispose of personal information in the garbage, but should instead cross-shred the information or have a reputable document disposal company destroy it. Landlords must also ensure that they securely destroy any electronic records that they no longer require.

G. ACCESS TO REQUESTS AND COMPLAINTS

33. Can tenants access their own personal information held by their landlords?

Yes. A tenant must provide the landlord with a written request to access his or her own personal information in the custody or under the control of the landlord. The landlord has 30 business days to respond to the request. This time limitation may be extended in specific circumstances, but it must be extended before the original 30 day period is finished.

A tenant may request a copy of the records or examine them on site. If requested, the landlord must also include information about the purposes for which the information was used, to whom the information has been disclosed and under what circumstances.

34. Does a landlord have to give the tenant everything?

A landlord may refuse to provide access to information that is:

- protected by legal privilege,
- of a confidential, proprietary nature,
- collected by the landlord for an investigation or legal proceeding, mediation, arbitration or dispute resolution process, or
- collected by a mediator, arbitrator or dispute resolution officer.

A landlord must refuse to provide access to the tenant's personal information if:

- it would threaten someone's life or security,
- it would reveal someone else's personal information, or
- it would reveal the identity of someone who provided personal information about someone else.

If possible, a landlord should make efforts to sever or black out the information that cannot be disclosed rather than withholding the entire document containing the information that must be withheld.

35. If a landlord receives a complaint letter about a tenant, can the tenant ask to see the original complaint letter?

A tenant may request access to the complaint letter; however the landlord must black out, or "sever", the name of the complainant, and any information that would identify the complainant, from the letter before providing a copy. The landlord must also sever any other personal information that does not belong to the tenant requesting the letter. If it would still be apparent who the complainant is, the landlord should not provide the letter to the tenant. Access must also be denied if it would result in safety or security concerns.

36. Can landlords charge a fee to tenants to access their personal information?

Yes, the landlord may charge the tenant a minimal fee to cover some of the costs incurred such as photocopying. If a fee will be assessed, a landlord must give the tenant a written estimate of the cost before processing the request. The landlord can request that the tenant pay a deposit, up to half of the fee estimate, before he or she will process the tenant's request.

37. Can tenants lodge a complaint against landlords in respect of privacy issues?

Yes. However, the OIPC asks tenants to attempt to resolve the matter with the landlord first. Landlords should ensure that they give their tenants clear contact information so that tenants may address matters directly with them. If the tenant is still unsatisfied, a written complaint with the tenant's signature may be submitted to the address below.

38. What can a tenant complain about?

If a tenant thinks the landlord has breached PIPA by improperly collecting, using or disclosing the tenant's personal information. If a tenant believes that the landlord is not taking reasonable security measures to protect personal information. If a tenant believes a landlord is charging unreasonable fees for access to personal information. If a tenant wants the OIPC to review the landlord's response to an access request because the landlord has refused or withheld the information or has not responded at all.

This document is an administrative tool intended to assist in understanding PIPA and is for general information only.

These guidelines do not constitute a decision or finding by the Office of the Information and Privacy Commissioner ("OIPC") respecting any matter under OIPC jurisdiction under the *Personal Information Protection Act* ("PIPA"). These guidelines do not affect the powers, duties or functions of the OIPC respecting any complaint, investigation or other matter under or connected with PIPA and the matters addressed in this document.

If you need more information or have questions about situations not covered by this document, you can call or write us and we will try to help. You can also find general guidance on PIPA and how it applies to businesses and organizations in our "Guide for Businesses and Organizations to British Columbia's Personal Information Protection Act" at [www.oipc.bc.ca/pdfs/private/a- GUIDE TO PIPA\(3rd ed\).pdf](http://www.oipc.bc.ca/pdfs/private/a- GUIDE TO PIPA(3rd ed).pdf).

Mailing Address: PO Box 9038, Stn Prov Govt, Victoria BC V8W 9A4

Location: 4th Floor, 947 Fort Street, Victoria BC V8V 3K3
(effective October 25, 2010)

Telephone: 250.387.5629 Facsimile:250.387.1696

Website: www.oipc.bc.ca

Toll Free enquiries through Enquiry BC at 800.663.7867 or 604.660.2421 (Vancouver)