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# **AUTHORIZATION FOR INDIRECT COLLECTION OF PERSONAL INFORMATION**

**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL**

**Drew McArthur, A/Information and Privacy Commissioner**

**September 21, 2017**

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## **SUMMARY**

Under section 42(1)(i) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”), the Acting Commissioner authorizes the Ministry of Public Safety and Solicitor General to indirectly collect personal information about missing and murdered Indigenous women and girls in two circumstances.

In the first circumstance, the Acting Commissioner authorizes the Ministry of Public Safety and Solicitor General to indirectly collect certain personal information about missing and murdered Indigenous women and girls from their family members or close personal friends.

In the second circumstance, the Acting Commissioner authorizes the Ministry of Public Safety and Solicitor General to indirectly collect personal information about missing and murdered Indigenous women and girls as it is disclosed to family members or close personal friends by outside agencies in response to requests for information facilitated by the Family Information Liaison Unit.

## **BACKGROUND**

On August 29, 2017, the Office of the Information and Privacy Commissioner received a request from the Ministry of Public Safety and Solicitor General (“Ministry”) for authorization to indirectly collect personal information about missing and murdered

Indigenous women and girls from their family members or individuals with whom they had a close personal relationship.

This personal information would be indirectly collected by the new Family Information Liaison Unit (“FILU”) within the Victim Services and Crime Prevention Division of the Community Safety and Crime Prevention Branch of the Ministry. FILU was recently established as a result of a need identified by family members during consultations of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

The National Inquiry into Missing and Murdered Indigenous Women and Girls was launched by the Federal Government in September 2016 with a mandate to examine and report on systemic causes of all forms of violence against Indigenous women and girls in Canada by looking at patterns and underlying factors. Its terms of reference authorize the Commissioners conducting the Inquiry to refer the families of missing and murdered Indigenous women and girls and survivors of violence against Indigenous women and girls for information and assistance with respect to matters such as ongoing or past investigations, prosecutions, or inquests to the appropriate provincial or territorial authority that is responsible for the provision of victim services.

During pre-Inquiry regional consultations, family members identified a need for assistance with accessing information related to the loss of their loved one. Many families reported barriers when attempting to acquire information about the loss of their loved one from criminal justice professionals and other agencies/services. Families also reported barriers when seeking general information that could support their understanding about processes and systems related to investigations of missing or murdered persons.

In response, the Department of Justice Canada announced that it would be providing funding (\$11.7 million over three years) for provinces and territories to establish FILUs to assist families of missing and murdered Indigenous women and girls. Alongside provincial and territorial counterparts, the Community Safety and Crime Prevention Branch of the Ministry of Public Safety and Solicitor General is leveraging this federal funding to establish a FILU in British Columbia. It will operate under the Victim Services and Crime Prevention Division.

FILU will work directly with families and close personal friends of missing or murdered Indigenous women and girls who are seeking information related to the loss of their loved one in order to facilitate their requests for information. It is anticipated that requests for information will include requests to the police (both RCMP and municipal) and the Coroners Service, as well as other government ministries. Any agencies responding to requests will undertake their own privacy assessments to determine what information can be released and to whom, based on applicable privacy laws, regulations and policies.

FILU may also assist family members in accessing available community services and resources where appropriate.

It is anticipated that the number of family members and friends who will seek information about the loss of their loved one will increase once hearings of the National Inquiry into Missing and Murdered Indigenous Women and Girls are underway. The National Inquiry hearings in British Columbia will begin in Smithers the week of September 25, 2017.

### **FILU request management database**

FILU will directly collect information about family members or close personal friends who have contacted FILU for assistance in obtaining information as well as the nature of their request. This direct collection is authorized by s. 26(c) of FIPPA.

This direct collection will occur when the family member or friend contacts FILU, in person, by phone, or by email, and provides personal information about themselves, including name and contact information.

FILU is seeking authorization to indirectly collect information about missing and murdered Indigenous women and girls from those family members or close personal friends pursuant to s. 27(1)(a)(ii) of FIPPA. This indirect collection will occur via an intake form during the initial intake process by FILU with the family member or friend.

The personal information will be entered into a request management database. The information will be used to assess the case, set expectations as to what amount of information the family member or friend is likely to receive, and connect the family member or friend with the appropriate agency. FILU may assist family members and friends in filling out the proper forms and send the forms and requests to outside agencies.

Personal information in the request management database about the family members and friends and their requests will be aggregated and non-identifiable information will be shared with Department of Justice Canada.

### **DISCUSSION**

Section 27 of FIPPA requires that a public body collect personal information directly from the individual the information is about, with specific exceptions. This requirement is based on privacy principles that individuals should have control of their personal information and that the collection of personal information should be transparent so that individuals can exercise their information rights. One of the exceptions to the requirement of direct collection is authorization from the Commissioner for the public body to collect personal information from sources other than the individual the information is about under s. 42(1)(i) of FIPPA.

In previous decisions where the exercise of the Commissioner's discretion under s. 42(1)(i) was at issue, the following questions have been considered:

1. Has a clear and sufficiently compelling public interest or objective been identified that cannot reasonably be accomplished through direct collection of personal information?
2. Is the requested departure from FIPPA's rule of direct collection clearly justified when judged against the nature of the personal information to be collected and the purpose for which (and to whom) it is to be disclosed or used?

There are two circumstances in which I have considered these same questions in relation to this request.

### **Indirect collection of personal information about missing and murdered Indigenous women and girls from family members and close personal friends**

The first circumstance is the indirect collection of personal information about missing and murdered Indigenous women and girls from family members or close personal friends when they contact FILU. I find that the objective of providing a centralized service to facilitate requests by family members or close personal friends for information about missing or murdered Indigenous women and girls to be sufficiently clear and compelling.

That there has been a high incidence of missing and murdered Indigenous women and girls in Canada in recent years is a very disturbing national tragedy. Through the National Inquiry and FILUs, government is committing significant resources to foster healing and closure for family members as well as identify and address systemic causes. It is critically important that family members and close personal friends of missing and murdered Indigenous women and girls receive as much assistance and support as possible in what will be difficult and emotional processes for them.

Clearly the objective of facilitating requests of family members and friends for information regarding the circumstances of the victim's disappearance or death cannot be accomplished through a direct collection of personal information. The victims cannot speak for themselves.

With respect to the second consideration, I find that the indirect collection of personal information for the purpose of identifying the victim and their circumstances is clearly justified in order to facilitate the connection between the requestor and the outside agency who may have information about the disappearance or death. Only the following personal information about the victims will be indirectly collected:

- name,
- alias (AKA),
- date of birth,
- gender,

- community last seen,
- age last seen,
- date last seen,
- accepted circumstance (i.e. murder or missing),
- cross-reference within the database (if any),
- photo,
- aboriginal status,
- person status,
- investigation status,
- primary ID, and
- police service ID.

This appears to be the minimum amount of personal information necessary to properly identify the victim and the known circumstances of her death or disappearance and identify the appropriate agency who may have relevant information.

Given that indirect collection impacts the information and privacy rights of an individual, this authorization must be circumscribed as much as possible in order to minimize those impacts. I therefore find that the Ministry should only collect personal information about a missing or murdered Indigenous woman from a family member or close personal friend. To ensure the service is culturally responsive and reflects Indigenous concepts of family, a family member may include spouse, child, parent, sibling, aunt, uncle, nephew, niece, grandparent, grandchild and cousins as well as non-blood relations such as cultural kin, adopted families, and foster care relatives.

Expanding this definition will not impact release of information by outside agencies, as each agency will be required to undertake their own privacy assessments based on governing laws and regulations. The Ministry should confirm such a relationship with the caller before asking the caller to disclose personal information about victims.

FILU indicated that it will not assess the legitimacy of an individual claiming to be a representative as it will not directly provide personal information about victims to individuals requesting information. At a minimum, FILU should note the nature of the relationship that the caller indicated they had with the victim to confirm that it was informed that it is one of a family member or close personal friend. Additionally, FILU will ask friends to identify their relationship to the victim (such as family friend, community advocate, or lawyer).

This personal information may be used by FILU for the purpose of facilitating requests for information about missing and murdered Indigenous women and girls made by their family members or close family friends to outside agencies. It may also be used for the creation of aggregate reporting to the Department of Justice Canada. The Ministry must ensure that the aggregated information disclosed to the Department of Justice Canada is de-identified and cannot be re-identified.

The Ministry may only disclose personal information about missing and murdered Indigenous women and girls indirectly collected from their family members or close personal friends when the information is being submitted by FILU as part of a request for information it is facilitating on behalf of family members or close personal friends or when organizing a meeting for them with outside agencies.

### **Indirect collection of personal information about missing and murdered Indigenous women and girls from outside agencies**

The second circumstance is the indirect collection of personal information about missing and murdered Indigenous women and girls from outside agencies. Part of the mandate of FILU is to ensure that information requested by family members and close personal friends is provided to them by agencies in a trauma-informed and culturally sensitive manner. Staff from FILU may be present at meetings that family members and friends have with outside agencies in order to support them as they hear information about the circumstances of their loved ones' disappearance or death. This information may be distressing and FILU wishes to offer assistance and solace to family members and close personal friends as they seek to understand and absorb the information that is presented to them.

Although this information about victims will not be recorded or retained by FILU, viewing or hearing personal information is still considered to be a collection by a public body that must be authorized under FIPPA.

I find that the public interest or objective of providing support to family members and close personal friends of missing and murdered Indigenous women and girls as they are given information related to the disappearance or death of their loved one is clear and sufficiently compelling and cannot reasonably be accomplished through direct collection of personal information.

I also find that this departure from FIPPA's rule of direct collection is clearly justified when judged against the nature of the personal information to be collected and the purpose for which (and to whom) it is to be disclosed or used. The personal information to be indirectly collected by FILU will be disclosed by agencies in response to requests for information by family members and friends that were facilitated by FILU. These agencies will have made a determination that they are legally authorized to disclose this information. This information will be about missing or murdered Indigenous women and girls and circumstances related to their disappearance or death. FILU will be indirectly collecting the information for the purpose of supporting family members and friends as they receive this information. It will only be used for that purpose and will not be recorded, retained, or disclosed by FILU.

For the reasons noted above, I authorize the Ministry to indirectly collect personal information about victims from agencies as it is disclosed to family members or close friends in response to requests for information facilitated by FILU. This indirect

collection can only occur at the time those agencies provide that information to family members and friends. The personal information can only be used for the purpose of supporting those family members and friends as they receive the information. The Ministry must not record, retain, or disclose the personal information.

## **AUTHORIZATION**

For the reasons noted above, under s. 42(1)(i) of the *Freedom of Information and Protection of Privacy Act*, I authorize the Ministry of Public Safety and Solicitor General to indirectly collect personal information about missing and murdered Indigenous women and girls in two circumstances.

In the first circumstance, I authorize the Ministry of Public Safety and Solicitor General to indirectly collect the following personal information about missing and murdered Indigenous women and girls from family members and close personal friends who have contacted the Family Information Liaison Unit for assistance:

- name,
- alias (AKA),
- date of birth,
- gender,
- community last seen,
- age last seen,
- date last seen,
- accepted circumstance (i.e. murder or missing),
- cross-reference within the database (if any),
- photo,
- aboriginal status,
- person status,
- investigation status,
- primary ID, and
- police service ID.


This personal information may only be used by the Family Information Liaison Unit of the Ministry of Public Safety and Solicitor General for the purpose of facilitating requests for information about missing and murdered Indigenous women and girls made by their family members or close family friends to outside agencies. It may also be used for the creation of aggregate reporting to the Department of Justice Canada. The Ministry must ensure that the aggregated information disclosed to the Department of Justice Canada is de-identified and cannot be re-identified.

The Ministry may only disclose personal information about missing and murdered Indigenous women and girls indirectly collected from their family members or close personal friends when the information is being submitted by the Family Information

Liaison Unit as part of a request for information it is facilitating on behalf of family members or close personal friends or when organizing a meeting for them with outside agencies.

In the second circumstance, I authorize the Ministry of Public Safety and Solicitor General to indirectly collect personal information about missing and murdered Indigenous women and girls as it is disclosed to family members or close personal friends at meetings with outside agencies in response to requests for information facilitated by the Family Information Liaison Unit. This indirect collection can only occur at the time those agencies provide information to family members or close personal friends. The personal information can only be used for the purpose of supporting those family members or friends as they receive that information. The Ministry must not record, retain, or disclose the personal information.

September 21, 2017

A handwritten signature in cursive script that reads "Drew McArthur".

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Drew McArthur  
A/Information and Privacy Commissioner  
for British Columbia