

AUTHORIZATION FOR INDIRECT COLLECTION OF PERSONAL INFORMATION

OFFICE OF THE MERIT COMMISSIONER

Michael Harvey, Information and Privacy Commissioner

June 11, 2024

SUMMARY

Under [section 42\(1\)\(i\) of the Freedom of Information and Protection of Privacy Act](#) (FIPPA), the Privacy Commissioner authorizes the Merit Commissioner to collect personal information from sources other than the individual the information is about for the purposes of performing a monitoring function following a recommendation from the Office of the BC Ombudsperson (Ombudsperson) to the BC Public Service Agency (PSA) under the *Public Interest Disclosure Act* (PIDA). The recommendation results from a PIDA investigation completed by the Ombudsperson into internal hiring practices involving the PSA.

BACKGROUND

Section 9.1 of the Terms and Conditions for Excluded Employees and Appointees [*Order In Council (OIC) appointee movement to Public Service Positions*] establishes that OIC appointees are not eligible to apply on internal temporary assignment hiring competitions.

Through a PIDA investigation, the Ombudsperson found that the PSA was not adhering to this policy. Over the last 10 years, 64 OIC appointees have successfully moved into internal temporary assignment positions. As a result, the Ombudsperson made a number of corrective recommendations to the PSA to ensure that hiring practices adhere to its policy. As a result of the PIDA investigation, the Ombudsperson recommends the Merit Commissioner have an oversight of any OIC appointments into the Public Service for three years.

To fulfil the Ombudsperson's recommendation, for the next three years the Merit Commissioner will receive personal information of any candidates for internal temporary assignment positions from the PSA. This typically includes, the personal information candidates provide in their employment application such as name, phone number, email, status of employment, home address, work history, educational background, and their knowledge and skills.

Section 27 of FIPPA requires that public bodies collect personal information directly from the individual the information is about, with specific exceptions. One of these exceptions is s. 42(1)(i) of FIPPA, which

gives the Privacy Commissioner the authority to permit public bodies to collect personal information from sources other than the individual the information is about. The Merit Commissioner asks me to exercise that authority in this instance.

DISCUSSION

A decision whether to exercise my discretion authorizing the collection of the personal information requested by the Merit Commissioner for the purposes of monitoring the PSA's compliance with the Ombudsperson's recommendation under PIDA is guided by answering the following questions:

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?

In their investigation of the PSA's internal hiring practices, the Ombudsperson found that the PSA's failure to ensure adherence to its policy constitutes systemic mismanagement, a wrongdoing under PIDA. The Merit Commissioner's mandate is to monitor the application of the merit principle in the PSA by conducting random performance audits of appointments, reviewing specific staffing decisions upon request of eligible individuals and reviewing processes that result in just cause dismissals. However, there is a gap in the legislation to allow the Office of the Merit Commissioner to monitor compliance with corrective recommendations pertaining to hiring processes. There is currently no statutory authority for the Office of the Merit Commissioner to receive the personal information of candidates for internal temporary assignment processes in a monitoring function.

In these circumstances, there is a compelling public interest to allow the Merit Commissioner to collect personal information about potential employees that cannot reasonably be accomplished by directly collecting personal information from those individuals, ensuring transparency in the hiring process. In addition, a departure from the rule of direct collection in s. 27 of FIPPA is clearly justified when judged against the nature of the personal information to be collected and the purpose for which it will be used, which is to ensure compliance with a PIDA investigation finding.

The Merit Commissioner has many years of expertise in the human resources oversight of the BC Public Service and a proven record of thorough, principle-based reviews of hiring processes. The personal information of candidates in these temporary assignment competitions is of the same nature as the personal information the Office of the Merit Commissioner currently receives under its mandate to review and audit those same competitions.

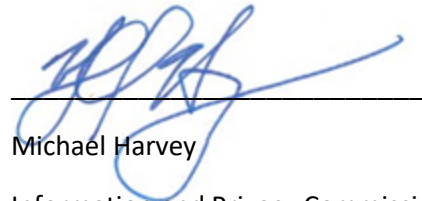
The Merit Commissioner has confirmed that in the event policy compliance issues are identified, no personal information will be released publicly or shared with any parties outside of the Office of the Merit Commissioner. Non-identifiable information will be sent to the Ombudsperson to allow that office to exercise its statutory authority under PIDA to ensure the PSA's implementation of the Ombudsperson's investigation recommendations.

AUTHORIZATION

There is, at present, no enactment in British Columbia authorizing the Merit Commissioner to collect this information from individuals other than the individual directly. For the Office of the Merit Commissioner to do so requires my authorization in accordance with [s. 27\(1\)\(a\)\(ii\) of FIPPA](#) for the purpose of monitoring the PSA's compliance with the Ombudsperson's recommendation under PIDA. For the reasons above, I have decided to exercise my discretion to authorize the Office of the Merit Commissioner's request.

This authorization is effective 12:01am June 11, 2024, and expires the sooner of when provincial legislation takes effect that would make this authorization redundant, or 3 years from the date of this authorization, on June 11, 2027.

June 11, 2024



Michael Harvey

Information and Privacy Commissioner
for British Columbia