



Checking References: Guidelines for Public Bodies

Hiring employees who are a good fit for a job is an essential component of the operations of any public body. Knowing how an applicant has performed in a previous workplace is an important part of the hiring process and checking references is a practice that gives the prospective employer some idea of how the applicant might perform in the future.

But what happens when a public body decides that a job applicant's references are inadequate because they are not recent or from direct work supervisors? Is the public body restricted to collecting past work performance information only from those sources provided by the applicant?

These guidelines are intended to clarify how public bodies may collect references in compliance with *the Freedom of Information and Protection of Privacy Act* ("FIPPA") when making hiring decisions. Many of the issues discussed in this guidance document arose from a complaint received by our office from a job applicant who was screened out of a competition based on information that was collected from individuals other than the references the applicant provided. Details of the adjudicator's decision can be found in Order F14-26.¹

Relevant Provisions of FIPPA

FIPPA outlines how public bodies can collect personal information, including information collected while conducting reference checks on job applicants.

Section 26 of FIPPA places limits on the collection of personal information by a public body. The portion of s. 26 that is relevant to reference checks limits authorized collection to information that is "expressly authorized under an Act" and that "relates directly to and is necessary for a program or activity of the public body".

Section 27 of FIPPA requires a public body to collect personal information directly from the individual the information is about unless indirect collection is authorized by one of the provisions in section 27(1). While section 27(1)(f) permits indirect collection of personal information if it is necessary for the purposes of "managing or terminating" an employment relationship between a public body and the employee, there is no language to permit indirect collection of personal information when establishing the employment

¹ See Order F14-26 at <https://www.oipc.bc.ca/orders/1670>.

relationship. Therefore, indirect collection for the purpose of a reference check is most likely to be authorized by consent of the applicant under section 27(1)(a)(i).

In Order F14-26, the adjudicator made it clear that checking additional references, without the knowledge or consent of the job applicant, was contrary to FIPPA. The adjudicator ordered the public body to stop collecting information in this fashion and to destroy the information it had already collected.

Options for Assessing Past Work Performance

Public bodies are obligated to deal with personal information in an open and accountable manner. For reference checks, this means collecting past work performance information with the knowledge and consent of the applicant.

If a public body determines that an applicant's choice of references is inadequate for a proper assessment of past performance, it should ask the applicant for more suitable references or seek the applicant's consent to collect information from specific individuals that it deems necessary.

Such an approach allows the applicant to clarify or amend their choice of references, and agree or disagree to the collection of information from other individuals. If a public body needs further references to assess a job applicant's past work performance, and the applicant refuses to provide them, it can take the applicant's refusal into account in its hiring decision.

The Role of the Information and Privacy Commissioner

The Information and Privacy Commissioner has statutory authority to investigate a public body's compliance with FIPPA. Investigations can take place as the result of an individual's complaint or at the Commissioner's own initiative. If the Commissioner determines that a public body has violated FIPPA, the Commissioner can issue an order compelling the public body to take remedial action.

If you have any questions about these guidelines, please contact our office by email at info@oipc.bc.ca or by telephone at (250) 387-5629 (in Vancouver call (604) 660-2421; elsewhere in BC call toll free at 1-800-663-7867). For more information regarding the Office of the Information and Privacy Commissioner, please visit www.oipc.bc.ca

These guidelines are for information only and do not constitute a decision or finding by the Office of the Information and Privacy Commissioner for British Columbia with respect to any matter within the jurisdiction of the Freedom of Information and Protection of Privacy Act ("FIPPA"). These guidelines do not affect the powers, duties or functions of the Information and Privacy Commissioner regarding any complaint, investigation or other matter under or connected with FIPPA, respecting which the Information and Privacy Commissioner will keep an open mind.