

Via consultation portal

May 31, 2024

Special Committee to Review the *Personal Information Protection Act*
Legislative Assembly of Alberta

Re: Public Consultation – Review of Alberta’s *Personal Information Protection Act*

Dear Chair and Committee Members,

I write to provide my submission as part of the Special Committee’s consultation process in reviewing Alberta’s *Personal Information Protection Act* (AB PIPA).

As Information and Privacy Commissioner of British Columbia, I am responsible for independent oversight and enforcement of BC’s *Personal Information Protection Act* (BC PIPA), as well as BC’s public sector *Freedom of Information and Protection of Privacy Act*. BC PIPA, like AB PIPA, has been in force since January 1, 2004. Both pieces of legislation were designed with harmonization in mind, to ensure substantial similarity as far as possible with other provincial and federal private sector privacy legislations.

As such, and to achieve proper balance between protecting privacy and enabling the use of personal information for businesses to prosper, it is essential that our private sector privacy laws keep pace with national and international developments. This will help ensure that businesses can thrive in the digital economy while protecting the privacy rights of Albertans.

As part of BC’s most recent statutory review of BC PIPA in 2020/2021, my office proposed recommendations for BC’s legislation in our [Submission to the Special Committee to Review the Personal Information Protection Act](#) (2020) and our [Supplemental Submission to the Special Committee to Review the Personal Information Protection Act](#) (2021). For the purpose of Alberta’s review, I have identified below five key recommendations that are especially applicable to AB PIPA. For full background and descriptions, please refer to our submissions.

Right to Data Portability

Services across a wide range of our daily activities are now delivered electronically, and often involve large quantities of our personal information. To honour the principle that individuals are entitled to have reasonable control of their own information, we recommend that AB PIPA be amended to enable individuals to obtain their own electronic personal information from an organization, or have it sent to another organization in a format that enables its ongoing use, at no expense to the individual. We recommend that these amendments include limits such as whether transfer is technically feasible, whether the request would interfere with a law enforcement matter or prejudice the legal rights of the organization.

Automated Decision Making, Notice and Rights

Information technologies are evolving in ways that can raise serious risks for individual rights and interests. While advances in artificial intelligence¹ can help improve services, they can also create risks for individuals' privacy, especially when automated predictions or decisions are being made that could have significant impacts on individuals. We therefore recommend that AB PIPA be amended to:

- require organizations to notify individuals of automated processing used to make a decision about them,
- on request, disclose the reasons and criteria used, and
- receive objections from individuals to the use of automated processing by someone within the organization that has the authority to review or change the decision.

Service Providers

Many organizations rely on contractors to perform business functions that involve the personal information of clients and customers. This outsourcing of business functions undoubtedly can help make organizations more efficient by eliminating associated capital and operating costs. However, this does not mean that organizations should be able to contract out their privacy responsibilities. Therefore, AB PIPA should be amended to require organizations to use contractual or other means to ensure service providers comply with PIPA. These amendments will ensure that service providers provide the same protection of the personal information as that which the organization is required to provide under this Act.

Notice

Both BC and AB PIPAs respect the foundational importance of individual consent, with the default position that organizations cannot collect, use or disclose an individual's personal information without that individual's consent. However, as digital services expand so too does the ability to find and understand increasingly convoluted and overly technical terms of service found in privacy policies. To ensure greater transparency about what organizations intend when it comes to processing personal information, we recommend that AB PIPA be amended to require organizations to use comprehensive, specific, clear, and plain language when giving notice of all the purposes for which the personal information is being collected, used, and disclosed.

Enforcement of the Act

While an educational and remedial approach to compliance is typically preferred by regulators, meaningful enforcement measures and sanctions are a key tool in any regulator's toolbelt to ensure organizations ultimately honour obligations under the law. Therefore, we recommend that AB PIPA be amended to enable the Commissioner to impose a monetary penalty on an organization for non-compliance with PIPA. The amendments should include due process and reconsideration requirements.

¹ Artificial intelligence has come to be used to describe a variety of different types of programming, which may or may not demonstrate "intelligence" but can generally be distinguished by algorithmic decision making at least partially independent from direct human control.

In addition to the above, I would like to emphasize my support in two additional areas, that of children's privacy and the application of PIPA to political parties.

Children's Privacy

Across Canada, we have seen growing calls from regulators, advocates, caregivers, and youth for legislative reform to protect and promote the information and privacy rights of young people in the digital world.

Last October, Canada's Federal, Provincial and Territorial privacy authorities issued a [joint resolution](#) calling on our respective governments to improve privacy legislation to put the best interests of young people first.

The resolution highlights what we all know: that young people's personal information is particularly sensitive.

It focuses on seven principles that public bodies and organizations should adopt and serves as a guide for legislative reforms. The principles include:

1. building in young people's privacy and best interests by design;
2. being transparent;
3. setting privacy protective settings by default, and turn off tracking and profiling;
4. rejecting deceptive practices;
5. limiting the disclosure of personal information;
6. allowing for deletion or deindexing and limiting retention; and
7. facilitating access to and correction of personal information.

Canadian privacy authorities are continuing to use other regulatory tools and initiatives to advance, protect and promote the information and privacy rights and interest of young people.

Urgent and effective regulation is needed to reduce the negative impacts on current and future generations. We encourage the committee to consider the particular privacy concerns of children by amending AB PIPA to offer specific protection for children's personal information.

Political Parties

At present, British Columbia is the only jurisdiction in Canada where political parties are subject to privacy legislation. It is also the only province where voters can complain to an independent body about a political party's privacy practices.

In 2018, the Federal, Provincial and Territorial Privacy Commissioners in Canada issued a [Joint Resolution](#) urging their respective governments to ensure Canadian law at all levels carries meaningful privacy obligations for political parties by passing legislation:

- Requiring political parties to comply with globally recognized privacy principles, including in regards to breach reporting;
- Empowering an independent body to verify and enforce privacy compliance by political parties through, among other means, investigation of individual complaints; and,
- Ensuring that Canadians have a right to access their personal information in the custody or control of political parties.

Here in BC, in 2019 my office reviewed the activities of BC's political parties in [Investigation Report P19-01](#). The report details how BC PIPA applies to the collection, use, and disclosure of "personal information" by BC's political parties, when they:

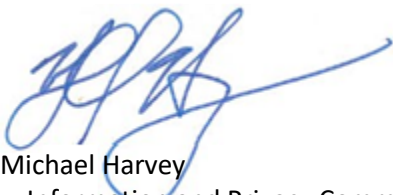
- approach voters to collect personal information about them, such as contact through door-to-door and telephone canvassing, petition;
- collect personal information indirectly, such as on social media or from data brokers;
- inform individuals through privacy policies on how they meet their obligations under PIPA; and
- provide access to individuals on their personal information.

We encourage the committee to amend AB PIPA to include political parties to AB PIPA's scope to protect the personal information of Albertans.

All organizations that collect, use, and disclose personal information need to be regulated for there to be a trusted system of privacy protection.

In closing, I appreciate the opportunity to comment, and am available to you should you require any clarification or additional information from my office.

Sincerely,



Michael Harvey
Information and Privacy Commissioner
for British Columbia

Cc Commissioner Diane McLeod