




# Is your business PIPEDA compliant?

Although most Mississauga-based businesses have taken measures to comply with the Personal Information Protection and Electronic Documents Act (PIPEDA), many, albeit unknowingly, continue to operate in contravention of this federal legislation.

**T**he purpose of this legislation is to balance a client's right to the privacy of their personal information with the need for organizations to collect, use, or disclose personal information for legitimate business purposes. Because PIPEDA was designed to help protect a client's privacy, it achieves this goal by setting out limits on, and rules for, the collection, use, and disclosure of personal information collected in the course of commercial activities.

While this is certainly true, PIPEDA can undoubtedly also be said to have had the unfortunate effect of complicating and slowing down otherwise simple business transactions. Many businesses, for example, incorrectly believe that their client must, at every turn, consent to the disclosure of their personal information pursuant to requests made by businesses for such information. As one can imagine, this greatly slows down the flow of business.

In most instances, this need for repeated consent could be avoided if the disclosing business in question were to have devised a proactive personal information collection method (i.e. obtaining a "blanket" consent from the client early on). Having such a method in place would deem it unnecessary for a business to continually request consent for a client's limited personal information. This being said, each business is unique,



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having different client interests at stake, and it is therefore important that each business take the time to consider whether limited or blanket personal information collection consent is required for their ongoing operations.

Whatever the merits or detractors of the legislation may be, it remains the case that as of January 1, 2004, all Canadian businesses are now required to comply with PIPEDA's ten privacy principles. We are told that the aim of these principles is to inform the development of a business' privacy policy explaining how the business manages its information flow lifecycle. In a nutshell, a business must create a privacy policy statement, which determines, amongst other things:

- i) how it collects personal information (collection);
- ii) what use is made of personal information (use);
- iii) who gets to see the personal information (disclosure);
- iv) how long personal information is kept (retention);
- v) where personal information is kept (security); and
- vi) how personal information is disposed of (disposal).

While it is certainly the case that PIPEDA does not regulate all personal information collected by a business, exceptions


are few and far between, some notable ones being a client's name, job title, business address, and business telephone number. As a result, it is difficult to imagine a business that would be exempt from PIPEDA's reach.

If a business fails to comply with PIPEDA, it risks being investigated by the Privacy Commissioner, who has the power to impose costly penalties in the event of certain instances of non-compliance. Moreover, such failure potentially exposes a business to litigation arising from an aggrieved client in Federal Court in which damages could be awarded to such client.

In the face of our ever growing reliance on electronic commerce, and the speed at which information changes hands between businesses, it is hard to fathom PIPEDA being repealed. Given such permanence, Mississauga business owners ought to look at compliance as an opportunity to improve client relations and save money by bringing about efficiencies in the business' information flow lifecycle.

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**Legal Disclaimer:** The above noted material is not intended, and should not be construed, as legal advice or opinion nor is it intended to be endorsed as lawful practice. Organizations concerned about the applicability of privacy legislation to their activities are advised to seek legal advice based on their particular circumstances.

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