

A FIRST NATIONS GUIDE TO THE PERSONAL INFORMATION AND ELECTRONIC DOCUMENTS ACT (PIPEDA)



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This guide to the Personal Information Protection and Electronic Documents Act provides the basic details of the legislation and is intended to help First Nations understand and navigate the federal Information Management regime. It is not intended to be legal advice and should not be relied upon as such.

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ABOUT FNIGC

The First Nations Information Governance Centre (FNIGC) is an incorporated, non-profit organization committed to producing evidence-based research and information that will contribute to First Nations in Canada achieving data sovereignty in alignment with their distinct world views. FNIGC is strictly technical, apolitical, is not a rights-holding organization, and does not speak directly for First Nations. Mandated by the Assembly of First Nations' Chiefs-in-Assembly (AFN Resolution #48, December 2009), FNIGC's Mission is to assert data sovereignty and support the development of information governance and management at the community level through regional and national partnerships. We adhere to free, prior, and informed consent, respect Nation-to-Nation relationships, and recognize the distinct customs of First Nations, to achieve transformative change. Our work includes research and analysis of the technical elements of First Nations data sovereignty.



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WHAT IS PIPEDA?

“PIPEDA” stands for the Personal Information Protection and Electronic Documents Act. It is federal legislation in Canada that protects any personal information collected, used, or disclosed during commercial activity.

PIPEDA applies to private-sector organizations which may include First Nations governments, businesses, and entrepreneurs. If you are a leader within a First Nation government or you run your own business, it is important that you understand what PIPEDA is, how it works, and what your responsibilities are. This guide will outline the key information you need to know about PIPEDA.

COMMERCIAL ACTIVITY

The goal of PIPEDA is to ensure that all personal information collected during commercial activity is secure and confidential. It also requires that businesses and governments can only keep personal information for as long as they need it.

PIPEDA applies to personal information collected by businesses operating in community. PIPEDA also applies to the personal information that a First Nation government may collect in the course of any commercial activity.

Commercial activity is defined within PIPEDA to mean any transaction, act, or conduct that is commercial in character. This can include the sale of items like beadwork, wood carvings or clothing. It can also include the sale of services like fishing and hunting excursions, equipment rentals, or speaking engagements.

Any transaction in which you receive funds for a good or service is considered a commercial activity by PIPEDA.



EMPLOYEE INFORMATION

First Nation governments may need to collect and keep personal information from their employees, like emergency contact information or human resources documents. This information must be collected with the consent of the employee and can only be kept and accessed for its intended purpose. For example, emergency contact information should not be widely accessible to all employees through an email list or employee file.



WHAT IS PERSONAL INFORMATION?

Sometimes when you are selling goods and services, personal information needs to be collected. But what is it? Personal information can mean several kinds of information, but the most common examples are listed below.

Information that can identify someone, which can include:

- age,
- name,
- ID numbers (e.g., Social Insurance Number),
- income,
- ethnic origin,
- credit card information,
- email address, and
- phone number.

Or records about someone, which can include:

- credit records,
- loan records,
- history of disputes between the customer and business, and
- inquiries for goods and services.

Information is not considered “personal information” if it is impossible to identify an individual with the information provided.

WHAT ARE YOUR RESPONSIBILITIES?

Businesses run by First Nations governments or individuals are required to ask for an individual’s consent before they collect, use, or disclose their personal information. To make it easier for businesses to understand their responsibilities under PIPEDA, the legislation lays out 10 principles that business owners must follow:

1. **Accountability**

You must make someone responsible to ensure your business is compliant with the rest of these principles.

2. **Identifying Purposes**

You must state why the information is being collected before or at the time the data is being collected.

3. **Consent**

You must ensure the person whose personal data you are collecting knows that their data is being collected and has consented to the collection, use, and disclosure of their personal data.

4. **Limiting Collection**

You can only collect personal information which is necessary to a transaction.

5. Limiting Use, Disclosure, and Retention

The personal information you collect can only be used for specific purposes, which must be explained to the individual prior to receiving their consent. Personal information can only be collected as long as it is needed to serve those purposes. If the personal information is to be used or disclosed in another manner, the individual must provide additional consent.

6. Accuracy

You must ensure the personal information that you collect is as accurate, complete, and current as possible to satisfy the purposes for which its used.

7. Safeguards

You must protect the personal information you collect. This protection must match the sensitivity of the personal information. For example, Social Identification Numbers or banking information, must always be completely confidential and secure.

8. Openness

You must make the policies and practices about how you collect and manage the personal information you collect public and readily available. For example, a business can clearly state its practices on signage within their storefront or list their policy on a dedicated page on their website.

9. Individual Access

You must ensure that an individual is informed about the existence, use, and disclosure of their personal information and that they are given access to this information if they request it. If the individual challenges the accuracy or completeness of the information, you must correct it with the current information.

10. Challenging Compliance

The person who is responsible for ensuring that a business is compliant with these principles must also be prepared to handle any challenges brought forward by an individual about the business' compliance with PIPEDA. In larger businesses or governments, this may be the Chief Privacy Officer. For smaller businesses or entrepreneurs, this may be the owner themselves.

BREACH OF PRIVACY

Any breach of security safeguards which pose a risk of significant harm must be reported to the Office of the Privacy Commissioner (OPC). If someone gets access to the personal information that you have collected, like a cyber scammer, this must be reported immediately to the OPC.



WHEN DOES PIPEDA NOT APPLY?

Sometimes PIPEDA may not apply to commercial activity. For First Nations governments and business owners this will likely happen in one of four scenarios.

- If the business is in a province where provincial legislation has been deemed by the federal Privacy Commissioner to be substantially similar to PIPEDA and thus replaces PIPEDA in the province. These businesses would have to be compliant with the provincial legislation instead. As of 2023, British Columbia, Alberta, and Quebec have their own legislation which may apply over PIPEDA completely or in specific situations. PIPEDA would continue to apply to First Nation employee information.

- If the relevant First Nation government has exercised its inherent rights of self-determination and enacted its own privacy law(s) that apply.
- If the information is personal health information and a provincial law relating to health information privacy applies.
- If the information collected, used, or disclosed is only for journalistic, artistic, or literary purposes.

Business contact information about First Nation employees does not fall under PIPEDA. This can include names, business email addresses, business telephone numbers, business address, or titles. Collecting contact information for personal reasons also does not fall under PIPEDA. An example of this could be making a contact list for holiday cards to be sent annually.



WHY SHOULD YOU TAKE PIPEDA SERIOUSLY?

There are many reasons that First Nations governments and business owners should be compliant with PIPEDA. Compliance ensures that the personal information collected, used, and disclosed is done so with consent and knowledge of the individual to which it belongs. Complying with PIPEDA will build trust with the business' customers.

The cost of complying with PIPEDA can be high, especially for large businesses that have not been focusing on PIPEDA before. However, non-compliance costs can be nearly 3 times higher than compliance costs (Ponemon Institute, 2017). These costs may include substantial fines, payment of damages, or a court order to take immediate corrective action. Non-compliance could also mean that the business could breach someone's privacy and be faced with legal action as a result.

This means that it is critical to the success of First Nations governments and businesses to comply with PIPEDA as soon as they open. For organizations currently operating, creating a plan on how to become compliant with PIPEDA is important to the future health and stability of the organization.

THE FIRST NATIONS PRINCIPLES OF OCAP® AND PIPEDA

PIPEDA covers the requirements for protection of personal information in the private sector, and First Nation employee records as determined by the Canadian government. However, it is important for First Nations governments and business owners to think about data privacy from a First Nation’s perspective as well.

The First Nations Principles of OCAP® refer to First Nations rights to own, control, access, and possess their data and information. These principles should be the foundation for any law, policy, or standard about data and information, including the protection of privacy over the personal information of First Nations citizens.

First Nations governments may have adopted their own laws on information privacy, and it is important to understand how to implement those as well. This is especially true for businesses and entrepreneurs operating within their First Nation. For First Nations governments personal privacy protection—when combined with the application of the First Nations Principles of OCAP®—can be a strong foundation from which to govern your data and information in all respects.

LOOKING FORWARD IN PRIVACY

PIPEDA is currently undergoing changes that may result in changes in the legislation for First Nations governments, business owners, and entrepreneurs. As such, it is important to understand your responsibilities under PIPEDA today and that these responsibilities may change in the years to come.



REFERENCES

Ponemon Institute LLC. (2017). The True Cost of Compliance with Data Protection Regulations: Benchmark Study of Multinational Organizations. Globalscape.

<https://static.helpsystems.com/globalscape/pdfs/guides/gs-true-cost-of-compliance-data-protection-regulations-gd.pdf>



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