

PRIVACY FACT SHEET

Disclosure of Personal Information to Law Enforcement

Under Ontario's access and privacy laws, institutions are prohibited from disclosing personal information, except in defined situations.

This fact sheet describes the key situations where institutions (public sector organizations such as provincial ministries and agencies, municipalities, schools, transit systems) can disclose personal information to a law enforcement agency under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*. It also explains how to respond when a law enforcement agency requests personal information, and how to be transparent to the public about disclosure decisions.

Generally, institutions should disclose personal information to a law enforcement agency *only when required by law*, such as in response to a court order, rather than a simple request, where there is no requirement to disclose.

However, they have the discretion to disclose in other situations, including where disclosure is made to aid an investigation, and for health or safety reasons.

In all cases, an institution should make its own careful and informed assessment of the circumstances before deciding whether to disclose personal information to a law enforcement agency. If uncertain, it should seek legal advice.



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

SOME DEFINITIONS

Ontario's access and privacy laws define **personal information** as "recorded information about an identifiable individual." For a full explanation of the definition, see the fact sheet *What is Personal Information?*

A **law enforcement agency** is a body engaged in policing or conducting investigations that could lead to proceedings in a court or tribunal where penalties could be imposed. Its primary function must be law enforcement (**Investigation Report I95-040P**). Other organizations that conduct investigations, such as insurance companies (**Investigation Report I95-096P**) and private security firms (**Investigation Report I95-040P**), are not law enforcement agencies.

WHEN CAN INSTITUTIONS DISCLOSE PERSONAL INFORMATION TO A LAW ENFORCEMENT AGENCY?

Institutions may disclose personal information to a law enforcement agency:

1. When legally required
2. To aid a law enforcement investigation
3. For health or safety reasons

1. When legally required

In some situations, they may be *required by law* to disclose personal information, such as on receipt of a court order (search warrant or production order) (sections **42(1)(e)/32(e)** of the acts). An institution must comply with a court order unless the order is successfully challenged in court.

2. To aid a law enforcement investigation

An institution has the discretion to disclose personal information to a law enforcement agency in Canada, without a court order, to aid an investigation (sections **42(1)(g)/32(g)** of the acts).

This type of disclosure might take place either on request of a law enforcement agency or on the institution's initiative.

On request of a law enforcement agency

After receiving a request, the institution must be satisfied that the request is:

- for specific information, **and**
- made in the context of a specific law enforcement investigation

Institutions should make their own careful and informed assessment of the circumstances before deciding whether to disclose personal information to a law enforcement agency.

Institutions may be required by law to disclose personal information, such as on receipt of a court order.

If these conditions are met, it should then determine whether the disclosure appears likely to intrude on a reasonable expectation of privacy by considering all relevant factors, including the:

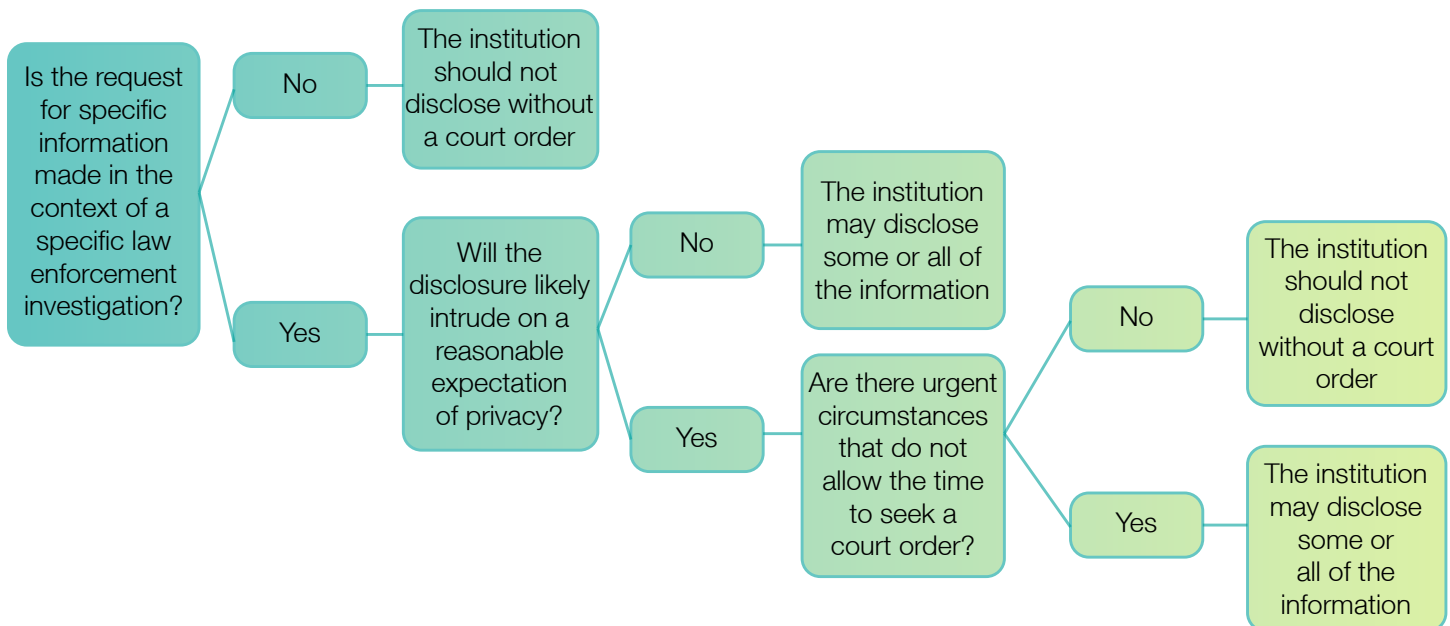
- nature of the investigation
- relevance of the information to the investigation
- sensitivity of the information
- number of individuals the information relates to
- period of time covered by the request
- number of events the information relates to

If the disclosure appears likely to intrude on a reasonable expectation of privacy, the institution should not disclose without a court order.

The only exception to this is where there are urgent circumstances that do not allow the time to seek a court order. In these cases, the institution should ask the law enforcement agency to explain why it is not feasible to seek a court order. Urgent circumstances may include cases involving a kidnapping, escaped violent offender, or missing vulnerable person.

In cases where disclosure does not appear likely to intrude on a reasonable expectation of privacy, the institution may disclose some or all of the requested information (see chart below).

LAW ENFORCEMENT INVESTIGATIONS



On the institution's initiative

An institution may disclose personal information to a law enforcement agency on its initiative, where it has a reasonable basis to believe that an offence has occurred. However, it should disclose only the information that appears to be relevant and necessary for a potential investigation. For example, if an institution captures an assault on its video surveillance system, it may disclose the video capturing the event.

If the law enforcement agency receiving the information decides not to start an investigation, the validity of the institution's decision would not be affected. What is important is that, at the time of disclosure, the institution had a reasonable basis to believe that an offence had occurred and it disclosed only the information that appeared to be relevant and necessary.

3. For health or safety reasons

An institution may disclose personal information in compelling circumstances affecting the health or safety of an individual (sections 42(1)(h)/32(h) of the acts). This includes disclosure to a law enforcement agency, whether in response to a request or on the institution's initiative.

Before disclosing personal information to a law enforcement agency for health or safety reasons, the institution must be satisfied that:

- there are compelling concerns about an individual's health or safety, having considered:
 - the likelihood of the harm occurring
 - the severity of the harm
 - how soon the harm might occur

and

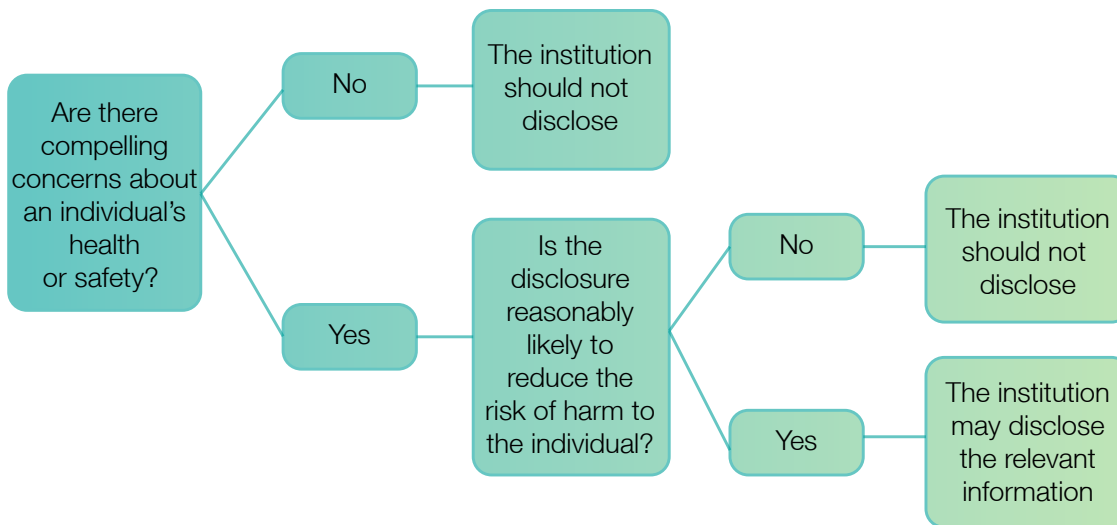
- the disclosure is reasonably likely to reduce the risk of harm to the individual

If the institution decides to disclose, it should limit the disclosure to the information relevant to reducing the risk.

An institution may disclose personal information to a law enforcement agency on its initiative, where it has a reasonable basis to believe that an offence has occurred.

An institution may disclose personal information in compelling circumstances affecting the health or safety of an individual.

HEALTH OR SAFETY



NOTICE OF DISCLOSURE

Under the health or safety disclosure provision in the acts, the disclosing institution *must* make reasonable efforts to notify individuals, in writing, that their information was disclosed.

In all other cases, the institution *should consider* notifying the individual. Before deciding whether to do so, it should consult with the law enforcement agency to determine whether the notice would interfere with the investigation or otherwise cause significant harm.

DOCUMENTING REQUESTS, COURT ORDERS AND DISCLOSURE DECISIONS

Institutions should document disclosure requests and court orders. An effective way to do this is to have law enforcement agencies complete and submit a form, which could include:

- the name, agency, badge number, file number, contact information, and signature of the law enforcement official seeking the information
- a detailed description of the information sought
- a description of the law enforcement purpose, investigation or proceeding to which the information relates
- the relevance of the information to the investigation
- in urgent circumstances, an explanation as to why it is not feasible to seek a court order

- the law enforcement agency's position on whether notification to the individual would interfere with the investigation or otherwise cause significant harm
- the date of the request or order

The documentation should include the decision, the name of the individual who made it, when it was made, and its factual and legal basis (for example, the specific exceptions under the acts that permit disclosure).

PUBLIC REPORTING

To be transparent and accountable to the public about their decisions, institutions should annually publish statistical information that includes:

- number of disclosures made at the institution's initiative
- number of requests received from law enforcement agencies, broken down by individual agency
- number of requests resulting in disclosure to law enforcement agencies, broken down by individual agency
- number of, and general description of the reasons for, rejected or partially rejected requests
- number of disclosures required by law, such as in response to a court order (including the law or type of court order)
- number of disclosures where there was no legal requirement to do so, broken down by those made:
 - to aid an investigation
 - for health or safety reasons
 - for other reasons, citing the specific exceptions under the acts
- number of persons whose personal information was disclosed
- a general description of the types of information disclosed
- number of individuals notified that their information was disclosed
- names of law enforcement agencies who made requests and/or received disclosures on the institution's initiative

DISCLOSURE POLICIES

The Office of the Information and Privacy Commissioner of Ontario (IPC) recommends that institutions develop and publish policies that address how they make and document decisions about disclosure to law enforcement agencies.

The IPC recommends that institutions develop and publish policies that address how they make and document decisions about disclosure to law enforcement agencies.

Disclosure policies should reflect the following best practices:

- verify the identity of the law enforcement official
- verify the authority for the proposed disclosure of personal information
- ensure that disclosure decisions are generally made by senior staff following their review of the relevant information and documentation
- where appropriate, conduct an internal review and engage legal counsel prior to disclosing to law enforcement
- take reasonable steps to ensure that the personal information is accurate and up to date
- document requests, court orders and disclosure decisions
- notify the individual whose information was disclosed, where appropriate
- annually publish statistical information on disclosure decisions

Individuals have the right to file a privacy complaint with the IPC if they believe their information has been improperly disclosed. The complaint process is described in the IPC's *Filing a Privacy Complaint*.

For any questions or concerns about the disclosure of personal information to law enforcement agencies or the duties and obligations of institutions, contact the IPC at info@ipc.on.ca or 1-800-387-0073.