

## Introduction

On January 1, 2004, non-profit organizations in Alberta became subject to Alberta's [Personal Information Protection Act](#) (PIPA). The Act contains a provision that limits the application of the Act to only certain personal information held by some non-profit organizations. This information sheet explains [section 56](#), and what it means for non-profit organizations.



## What is a non-profit organization?

PIPA defines a non-profit organization in [section 56\(1\)\(b\)](#). For the purposes of the Act, a non-profit organization is an organization that is:

- incorporated under the *Societies Act*,
- incorporated under the *Agricultural Societies Act*, or
- registered under Part 9 of the *Companies Act*.

Other organizations may operate on a not-for-profit basis, but the provisions in [section 56](#) only apply to the organizations listed above. For other non-profit organizations, the entire Act applies to the personal information of their employees, volunteers, clients and donors.



## What is a commercial activity?

Non-profit organizations (as defined in the Act) will be covered to the extent that personal information is collected, used or disclosed during a commercial activity. This is the same extent that the federal [Personal Information Protection and Electronic Documents Act](#) (PIPEDA) would apply, if Alberta had not brought in its own legislation. PIPEDA applies to personal information associated with a commercial activity.

The term *commercial activity* arises from PIPEDA. There has been little interpretation of the term "commercial activity" by the courts or Canadian privacy commissioners. The following provides some direction on how the term may be interpreted, but the information is subject to revision as Commissioners' decisions are made.

The Act defines "commercial activity" for the purpose of [section 56](#) regarding non-profit organizations, as

- (i) any transaction, act or conduct, or
- (ii) any regular course of conduct,

that is of a commercial character, and without restricting the generality of the foregoing, includes the following:

- (iii) the selling, bartering or leasing of membership lists or of donor or other fund-raising

lists;

(iv) the operation of a private school or an early childhood services program as defined in the *School Act*;

(v) the operation of a private college as defined in the *Colleges Act*." ([section 56\(1\)\(a\)](#)).

A non-profit organization that is generally not commercial in nature will nonetheless be subject to PIPA for a commercial transaction involving the sale of personal information within Alberta.

Examples may include:

- The sale of merchandise within the province by catalogue or Internet sale, where personal information of an individual is collected (e.g. name, address, credit card number).
- Collecting names and address of individuals who register in a conference or training session.
- Selling a membership or donor list to an organization within the province.

Examples of activities that may not be considered to be a commercial activity include:

- Donations made to a non-profit organization where no product or service is exchanged.
- An individual signing up for a free newsletter (the personal information could only be subsequently sold in accordance with PIPA).
- An individual using the free services of the non-profit organization.
- Payment of a membership fee to a community league.

**NEW** In a recent Ontario Superior Court of Justice decision, the judge accepted the federal Privacy Commissioner's guideline that collecting membership fees, organizing club activities, compiling a list of members' names and mailing out newsletters are not commercial activities. This meant that PIPEDA did not apply to these activities of a society in Ontario (see [Rodgers v. Calvert](#), Doc. No. 03-BN-6556, September 8, 2004 (Ont. Sup. Ct.)).



## Factors to determine commercial activity

In determining whether a transaction is a commercial activity for the purposes of PIPA, the following factors, when considered together, may be helpful in assessing the commercial nature. Non-profit organizations themselves determine whether the activity is a commercial activity.

- Is the activity conducted for the purpose of fund-raising for charitable purposes (rather than to raise funds for regular operations or non-charitable purposes)?
- Is the activity financially supported by the activities of the organization or operated on a cost recovery basis (rather than intended to make a profit to be used to support other activities)?
- Is the activity one that tends to be provided only by the government or non-profit sector (rather than by private sector businesses)?
- Is the primary purpose of the activity to provide a public benefit (rather than benefit individual participants or clients)?

- Does the activity involve consideration by one party (rather than consideration for both parties)?



## Examples applying the factors

The following examples may help to illustrate how the factors may be used to decide whether an activity is a commercial activity.

**Example 1:** A service group sells \$25 raffle tickets to purchase a special wheelchair for a child in their community. Personal information is collected on the ticket to contact the winner.

Consider the factors:

- The activity is conducted to raise funds for a charitable purpose.
- The activity is intended to generate a profit to support the activity of purchasing the wheelchair.
- The activity is normally provided by the government or non-profit sectors.
- The activity benefits the public (rather than the organization) and the outcome of the activity benefits an individual.
- The activity involves consideration by one party, i.e. a donation in the hope of winning a prize.

*Conclusion:* On balance, the activity is not a commercial activity, as the factors weigh towards an affirmative answer to the questions.

**Example 2:** A non-profit society offers addictions counseling. Fees are charged on an hourly basis comparable to the private sector. Notes containing personal information are created during the counseling sessions.

- The activity is not a fund-raising activity for charitable purposes.
- The activity is intended to make a profit for the organization.
- The activity is regularly provided by private sector businesses.
- The activity benefits the client.
- Consideration is two-way, in that the organization receives a fee, and the client receives a service.

*Conclusion:* The activity is a commercial activity, and the personal information would be subject to PIPA.



## Implications

Certain categories of personal information will not be subject to PIPA, meaning that the Act will not apply.

The personal information includes such categories of records as:

- Employment records of employees, volunteers, and board members, including

- resumes, criminal reference checks, payroll and benefit information.
- Counseling records or other client records where no fee was charged for the service.
- Personal information collected as part of a membership process.
- Personal information collected during fund-raising activities.

Non-profit organizations will continue to develop their own policies and practices around protecting and disclosing personal information. Individuals will not have a legal right of access to personal information about themselves.

Activities where personal information collected will be subject to the Act include:

- Any sale, barter, or leasing of membership, donor, or fund-raising lists.
- Any sale, barter or leasing of personal information.
- Counseling records or other client records where a fee was charged for the service.
- Personal information collected in the course of a commercial activity, where the intent of the activity is to make a profit. An example would be a courses offered in competition with the private sector.



## Records subject to the FOIP Act

PIPA will not apply to records created by a non-profit organization that offers a service under contract to a public body under the *Freedom of Information and Protection of Privacy (FOIP) Act*, such as a government department or agency (e.g. Children's Services, a Child and Family Service Agency, AADAC), a regional health authority or a municipality. In such cases, the contract from the public body should say that the public body retains control of the records, and the FOIP Act will continue to apply to those records.



## Checklist

Non-profit organizations can review the following checklist to prepare for the Personal Information Protection Act.

1. Is the organization incorporated under the *Societies Act* or the *Agricultural Societies Act*, or registered under Part 9 of the *Companies Act*? If not, then the entire Act applies to the organization's activities.
2. Do the activities undertaken by the organization involve the collection, use or disclosure of personal information within Alberta?
3. Do the activities involving the collection, use or disclosure of personal information meet the definition of a commercial activity?

If the answer to all three questions is yes, then the organization will need to comply with the *Personal Information Protection Act* for the personal information affected by a commercial activity.

## Will PIPEDA apply?

An Alberta organization may be subject to PIPEDA for a transaction, where personal information is collected, used or disclosed across a border as part of a commercial activity. This is the case whether the organization is a business or a non-profit organization.

A [Guide for Businesses and Organizations on the Personal Information Protection Act](#) provides an overview of the Act with examples and tips for incorporating good privacy practices in the work place.

## Other resources

A [Guide for Businesses and Organizations on the Personal Information Protection Act](#) provides an overview of the Act with examples and tips for incorporating good privacy practices in the work place.

The [Personal Information Protection Act, A Summary for Organizations](#) summarizes of the key obligations of organizations.

[Getting Ready for PIPA](#) is a quick reference for organizations preparing for the Act.

Publications are available on-line from:

Access and Privacy Branch  
Alberta Government Services  
[www.pipa.gov.ab.ca](http://www.pipa.gov.ab.ca)

The web site of the Office of the Information and Privacy Commissioner also contains resources, at [www.oipc.ab.ca](http://www.oipc.ab.ca).

## About this document

This Information Sheet was prepared to assist organizations implement the [Personal Information Protection Act](#) that came into effect on January 1, 2004. This document is an administrative tool intended to assist in understanding the Act. It is not intended as, nor is a substitute for, legal advice. For the exact wording and interpretation of the Act, please read the Act in its entirety. This Information Sheet is not binding on the Office of the Information and Privacy Commissioner of Alberta.