

# **Guide for Developing Personal Information Sharing Agreements**

Revised October 2003  
(updated to reflect A.R. 186/2008)



**ISBN 0-7785-3104-X**

Produced by:

Access and Privacy  
Service Alberta  
3rd Floor, 10155 – 102 Street  
Edmonton, Alberta, Canada T5J 4L4

Office Phone: 780-422-2657  
Fax: 780-427-1120

FOIP Help Desk: 780-427-5848  
Toll free dial 310-0000 first  
E-mail: foiphelpdesk@gov.ab.ca

Websites:

[foip.alberta.ca](http://foip.alberta.ca)  
[pipa.alberta.ca](http://pipa.alberta.ca)



# Freedom of Information and Protection of Privacy Guide for Developing Personal Information Sharing Agreements

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## 1. INTRODUCTION

Public bodies subject to the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) may need to share personal information for a variety of reasons.

Some examples of this sharing might be:

- A provincial government department needs to ensure that a client receiving provincial income support is not receiving employment insurance benefits at the same time.
- A post-secondary institution wishes to share the names, addresses and program of study of its alumni with its fund-raising foundation for fund-raising purposes.
- A school board needs to share personal information of certain students with a non-profit organization so that they may participate in organized provincial sports.
- A housing management body needs to determine if a tenant is paying the appropriate amount of subsidized rent.
- A faculty association of a post-secondary institution needs to obtain certain personal information about its members from the institution that employs them.

This Guide is intended to assist Freedom of Information and Privacy (FOIP) Coordinators in understanding some of the issues related to the sharing of personal information with other public bodies or with organizations that are not subject to the Act.

The Guide also provides a framework for drafting personal information sharing agreements. The framework is a guideline only. Legal advice should always be sought regarding the terms and conditions

of any particular personal information sharing agreement.

Personal information sharing agreements formalize the mechanism and arrangements for public bodies to share or exchange personal information. However, before a public body may enter into such an agreement, under the FOIP Act there must be some authority for the collection, use or disclosure of the personal information that will be the subject of the agreement. (See Authority for Personal Information Sharing in section 6 of this Guide).

The FOIP Act (**section 2(b) and (c)**) provides individuals with:

- a right to access personal information about themselves that is held by a public body, subject to limited and specific exceptions; and
- control over the manner in which a public body collects, uses and discloses their personal information.

In certain circumstances, the interests of individuals in protecting their personal privacy must be balanced against various public interests, as indicated in the examples above. However, any sharing of personal information, unless it is with the individual's consent, is potentially an invasion of personal privacy.

Tom Wright, a former Ontario Information and Privacy Commissioner, pointed out in his paper on a *Model Information Sharing Agreement* that “sharing personal information between two organizations runs counter to two of the most fundamental principles of data protection – that personal information should be collected directly from the individual to whom it pertains, and should only be used for the purpose for which it was collected (with limited exceptions). Therefore,

where possible, sharing should not occur without exploring less privacy-invasive means of meeting a specific objective.”<sup>1</sup>

Sharing personal information should be the last resort for meeting a specific objective. Once a public body has made the decision that it must share some of the personal information it holds, the sharing should be supported by a written personal information sharing agreement.

## **2. DEFINITIONS**

In this Guide:

**“Information sharing”** means the exchanging, collecting, using or disclosing of personal information by one public body or other organization with another public body or other organization for certain purposes. The sharing may be carried out using any transmission method and may take place over any time period.

Public bodies and organizations may include provincial or federal government ministries, agencies, boards or commissions, municipalities or other local government bodies, police services, post-secondary institutions, health care bodies, school jurisdictions, private companies, non-profit organizations or foreign governments.

**“Data matching”** means a computerized comparison of a database(s) or set(s) of records of personal information held by one public body or organization with another database(s) or set(s) of records held by a different public body or organization, where the computer matching program creates or merges files

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<sup>1</sup> Tom Wright, former Ontario Information and Privacy Commissioner, *Model Data Sharing Agreement*, December, 1995

on identifiable individuals to make decisions about the individuals to whom the data relates.

**“Data linkage” or “data profiling”** means a computerized use of personal data obtained from a variety of sources, including personal information banks, to merge and compare files on identifiable individuals or categories of individuals for administrative purposes. This linkage or profiling activity generates a new body of personal information.

**“Personal information”** means recorded information about an identifiable individual as set out in **section 1(1)(n)** of the FOIP Act.

## **3. RESEARCH AGREEMENTS**

Personal information sharing agreements shouldn’t be substituted for, or confused with, research agreements under **section 42(d)** of the FOIP Act. **Section 42** of the Act enables public bodies to disclose personal information for a research purpose, including statistical research, if the conditions in that section have been met.

One of those conditions is that a researcher must sign a research agreement that meets the requirements of **section 9** of the FOIP Regulation. An example of an Agreement for Access to Personal Information for Research or Statistical Purposes is included as an Appendix in the *FOIP Guidelines and Practices* manual.

This type of agreement is suitable to use with an individual or a group of researchers where the public body has approved a research proposal; and the purpose for the disclosure of personal information is for research or statistical

analysis only, not for other purposes such as administration of a program.

On the other hand, research or statistical analysis may be one of several purposes for information sharing between bodies. If that is the case, then the recitals in the personal information sharing agreement must include statements showing that the requirements of **section 42(a) and (b)** of the FOIP Act have been met. In addition, the agreement must include clauses that deal with the privacy protection and security requirements of **section 42(c) and (d)** of the Act.

#### **4. NEED FOR PERSONAL INFORMATION SHARING AGREEMENTS**

Information sharing can occur on a one-time, time-limited or ongoing basis. It may involve the collection or disclosure of a small number of data elements about a particular client group for the administration of one program or a large number of data elements compiled about a number of identifiable clients, client groups or populations for a research purpose. It may also involve the collection or disclosure of the same data elements for a number of purposes.

If a public body discloses personal information under an information sharing arrangement, it is a **source** of personal information and must comply with the disclosure provisions of the FOIP Act (**section 40**). The data sharing agreement is the means for safeguarding the personal information once it has been disclosed.

If a public body collects personal information under an information sharing arrangement, it is a **recipient** of personal information and must comply with the

collection provisions of the FOIP Act (**sections 33 and 34**).

If a public body which is a **recipient** of personal information uses the information that it has collected through the arrangement, it must comply with the accuracy and use provisions of the FOIP Act (**sections 35 and 39**) and also with the research provisions of the Act (**section 42**), if the information is used for research. It must also comply with **sections 36 and 38** of the Act respecting the correction, protection and security of the information it has collected and that it uses under the arrangement.

When a public body is either a **source** or **recipient** of personal information, **Part 2** of the FOIP Act applies to all aspects of the sharing of personal information. A personal information sharing agreement sets out the parameters of the arrangement and can help to ensure that the arrangement doesn't contravene the Act.<sup>2</sup>

Using a personal information sharing agreement to establish the terms and conditions that will apply to a sharing of personal information has the following benefits:

- It provides a formal mechanism for the efficient and timely sharing of personal information by public bodies which might otherwise require an authorization or consent each time the information was disclosed.
- It limits the type and amount of personal information that can be disclosed and the purposes for which it can be used.

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<sup>2</sup> Office of the B.C. Information and Privacy Commissioner, *Privacy Guide for Personal Information Exchange Agreements* (undated)

- It provides an assurance of privacy protection of the personal information both during and after the sharing. Each party to the agreement agrees to be bound by enforceable terms and conditions regarding their access to, use, disclosure, protection, retention and disposition of the personal information subject to the agreement.
- It ensures that the public becomes aware that their personal information is being used and disclosed for the purposes set out in the agreement.

## **5. TYPES OF PERSONAL INFORMATION SHARING AGREEMENTS**

Personal information sharing agreements can be used to document many different arrangements related to the collection, use and disclosure of personal information between public bodies or between public bodies and other organizations. For illustrative purposes, these agreements can be classified according to their purpose or according to the way in which the information flows between the bodies.

### ***By Purpose of Sharing***

The sharing of personal information may be limited to a single purpose in an agreement or may encompass a number of purposes. Some of these purposes are:

- For administration of a program or service – e.g. determining or verifying the eligibility of clients for social assistance or employment insurance.
- For enforcement of legislation or of an authorized program – e.g. ensuring compliance with certain conditions or eligibility criteria of the Alberta Student Loan Program; preventing and

detecting duplicate or overpayments of benefits from both federal and provincial government programs where there is only entitlement to one; collecting or recovering overpayments; or instituting legal proceedings against offenders.

- For research, statistical analysis, policy development or planning.
- For program evaluation – e.g. conducting studies or analyses of information to determine the effectiveness of a program or individual intervention.
- For accountability – e.g. monitoring and assessing the effectiveness of a program or expenditure to meet reporting requirements under an agreement, statute or regulation.
- For multiple purposes – e.g. for administration, enforcement and evaluation of a program or service and for research and statistical analysis.
- For interagency delegation – e.g. where employees of different levels of government are co-located and act on each other's behalf to provide programs and services to each other's clients.

**Public bodies should always first consider whether some of the above noted purposes could be accomplished without the use of personal information.**

### ***By Direction of Flow of Information***

**One-Way Flow:** Some personal information sharing agreements allow personal information held by a public body to be accessed by designated staff of another public body or other organization. This can be accomplished through online or other types of access to certain databases or applications containing personal information or through access to

certain screens within an application. Examples of these types of agreements are:

- An agreement between Alberta Education and Alberta Registries for online access to certain registry information for the purposes of audit, verification and investigations related to student financial assistance recipients.
- An agreement between a public post-secondary institution and its student association for disclosure of student information collected during registration for purposes of developing the voters' list and for communication with, and promotion of programs and services for, student members.
- An agreement between Alberta Education and a post-secondary institution to allow designated institutional staff access to several Student Finance Board's information system screens for purposes of advising students regarding the status of their loan applications.
- An agreement between the Board of Trustees of a School District and the Alberta Schools Athletic Association for the disclosure of certain personal information of students to operate and administer organized, provincial competitive sports programs on behalf of member boards, schools and their students.
- An agreement between Alberta Employment and Immigration (EI) and Canada Revenue Agency for the disclosure of personal information by Canada Revenue Agency to determine the eligibility of clients of EI who have applied for the Child Health Benefit Program.

- An agreement between EI and Human Resources Development Canada (Canada Pension Plan) for the disclosure of particulars of CPP benefit entitlements for clients who also receive benefits through the EI's Supports for Independence (SFI) and Assured Income for the Severely Handicapped (AISH) programs. The level of entitlement may impact their eligibility for SFI or AISH benefits.

**Two or Three-Way Flow:** Other types of personal information sharing agreements provide for the reciprocal sharing of personal information between public bodies or between levels of government. Often the mechanism involves data matching or data linkage for purposes of administering, enforcing or evaluating a program or legislation of one or the other public body, but it could also involve personal information being exchanged for research purposes under **section 42** of the FOIP Act.

In this type of agreement, one public body or level of government discloses personal information about clients in a program to another public body or level of government for certain purposes. The other public body(ies) or level of government reciprocates by disclosing personal information it may have about the clients of the first body or level of government.

An example of reciprocal information exchange is the Information Sharing Annex to the Canada/Alberta Labour Market Development Agreement (LMDA). This Annex details the flow of data elements between Canada (Human Resources Development Canada) and Alberta (Employment and Immigration) to enable each government

department to carry out its respective duties and functions under the federal *Employment Insurance Act*.

Under the LMDA, Canada provides funding to Alberta so that Alberta can provide various employment and training programs and services to eligible Albertans, who previously received those services directly from the federal government. In order for the parties to carry out their respective responsibilities and functions under the LMDA:

- Alberta needs certain personal data elements from Canada about employment insurance recipients for the strategic selection of clients, for determining the eligibility of Alberta's clients for employment and training benefits (under Part 2 of the *Employment Insurance Act*) and for operating and administering these programs and services for Albertans.
- Both Canada and Alberta need certain personal data elements from each other about each other's clients to prevent and detect the duplication or overpayment of federal employment insurance entitlements and provincial income support.
- Canada needs certain personal data elements from Alberta about Alberta's clients to monitor and assess the effectiveness of the funding it provides to Alberta for those benefits and to enable it to report to Parliament for accountability purposes.
- Canada and Alberta also exchange certain personal data elements of each other's clients for statistical analysis and planning purposes.

## **6. AUTHORITY FOR PERSONAL INFORMATION SHARING**

A personal information sharing agreement is a way of formalizing the mechanism through which personal information will be shared. The authority for the sharing, or the duty or obligation that underlies the need to share personal information between public bodies or between a public body and another entity, should be found elsewhere.

**Section 33** of the Act sets out the circumstances under which public bodies may collect personal information. **Section 34(1)** provides for limited situations where indirect collection of personal information is permitted. Some of the more common indirect collections under that section that could lead to a personal information sharing agreement would be:

- where another method of collection has been authorized by the individual or another Act or Regulation (e.g. *Employment Insurance Act (Canada)*, *Income Tax Act (Canada)*, *Statistics Act*, *Students Finance Act* (**section 34(1)(a)**).
- where the information is collected for the purpose of determining suitability for an honour or award, including an honorary degree, scholarship, prize or bursary (**section 34(1)(e)**).
- where the information is collected from published or other public sources for the purpose of fund-raising (**section 34(1)(f)**).
- where the information is necessary to determine the eligibility of individuals to participate in a program or to receive a benefit, product or service from the Government of Alberta or a public body and is collected in the

course of processing an application made by or on behalf of the individual it is about (**section 34(1)(k)(i)**).

- where the information is necessary to verify the eligibility of individuals who are participating in a program of or receiving a benefit, product or service from the Government of Alberta or a public body and is collected for that purpose (**section 34(1)(k)(ii)**).

**Section 40(1)** of the Act sets out the circumstances under which public bodies may disclose personal information. Some of the more common disclosures of personal information under that section that could lead to a personal information sharing agreement would be:

- for the purpose for which the information was collected or for a consistent purpose (**sections 40(1)(c) and 41**).
- if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure (**section 40(1)(d) and section 7 of the Regulation**).
- for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada (**section 40(1)(e)**).
- for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure (**section 40(1)(f)**).
- for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit (**section 40(1)(i)**).

- for the purpose of fund-raising activities of a post-secondary educational body (**section 40(2)**).
- for the purpose of assisting in a law enforcement investigation (**section 40(1)(q)**).

Usually, a federal or provincial statute or another agreement (e.g. a collective bargaining agreement) establishes the power or duty requiring or authorizing the disclosure of personal information that becomes subject to a personal information sharing agreement.

For example, section 63 of the *Employment Insurance Act (Canada)* authorizes the federal government to enter into agreements with the provinces regarding the provincial operation of labour market training and development programs. Under such an agreement, the sharing of personal information of clients of both the relevant federal and provincial government departments is needed to fulfill a number of operating purposes such as determining and verifying eligibility of clients for programs and services, evaluating the effectiveness of the programs and services offered and preventing and detecting overpayment or duplication of payments to the same individual.

At post-secondary institutions, collective agreements between the boards of governors of the institutions and their respective academic and non-academic staff associations require the sharing of certain types of personal information of the faculty and support staff to compile member and voting lists, to ensure that membership fees are collected, to allow for the canvassing of members' views and to offer and promote member programs and services.

A personal information sharing agreement would set out the method and frequency of the sharing, the personal information required to be shared and the limitations and controls on the sharing.

## **7. REQUIREMENTS FOR PERSONAL INFORMATION SHARING AGREEMENTS**

In order to comply with **Part 2** of the FOIP Act, government policy (as outlined in *FOIP Guidelines and Practices*), recommends that public bodies who intend to formalize a collection, use or disclosure of personal information through a personal information sharing agreement:

- ensure that there is authority for the collection, use or disclosure of the personal information under **sections 33, 34, 39 or 40** of the Act (see section 6 of this Guide).
  - ensure that a preliminary assessment is carried out to determine the feasibility of the proposed match, linkage or sharing including the potential impact on the privacy of individuals and the costs and benefits of the data matching program. Data matching requirements are discussed in more detail in section 8 of this Guide.
  - forward to the Office of the Information and Privacy Commissioner a copy of the proposed agreement and/or the preliminary assessment for review and comments at least 60 days prior to signing.
  - ensure that only the personal information necessary to enable the public body to carry out the purposes in the agreement is collected, used and disclosed through the agreement (**section 40(4)**).
- notify the public or any affected group about the agreement (for example through signage in the public body's offices, notices placed with program information on web sites, in brochures, or on benefit cheque inserts) and, if the sharing involves an ongoing matching program, add a description of the program to the relevant personal information bank(s).
  - if data matching is involved, verify the information generated with original or additional authoritative sources before that information is used for an administrative decision-making purpose.
  - comply with provisions of the FOIP Regulation (if any) respecting standards to be observed and procedures to be followed when implementing a program for data matching, information sharing or data linkage.
  - if health information is being collected, used or disclosed through data matching, comply with the provisions of sections 68 through 72 of the *Health Information Act*. **This only applies to those public bodies that are also custodians of health information under the *Health Information Act*.**
  - ensure that the agreement has been reviewed and approved by senior officials of the public body(ies) involved and that it has been signed by the head of the public body or by a person who has been delegated the authority to sign such agreements.

## 8. DATA MATCHING AND LINKAGE

Personal information sharing agreements may involve data matching or linkage. Data matching plays a valuable role in increasing the efficiency of a wide variety of public body programs. However, there is a need to balance these efficiency and effectiveness requirements with the potentially invasive nature of the activity. Also, careful attention needs to be paid to the quality of the data being matched and its reliability when pursuing administrative actions against individuals.

A data matching program compares a set, or sets, of records containing personal information held by a recipient or source public body with another set, or sets, of records held by a second recipient or source public body or other organization. Data matching incorporates all stages of the matching process, from program collection to disposal of data. Data matching may or may not generate a new personal information bank. Any new information which may be created by the matching process should also be subject to the terms of the agreement.

Public bodies must comply with the requirements outlined in section 7 of this Guide for all except the following types of data matching activities, which consist of the matching or linkage:

- of information not used for an administrative purpose directly affecting an individual.
- of two or more databases of information collected and held for the same purpose. In this case, consideration should be given to anonymizing the information or to stripping any personal identifiers after

use to protect the information from subsequent use for a different purpose.

- involving programs which review the contents of a record system to remove or correct items where there is no intention to take administrative action.
- involving programs which co-locate items previously in separate locations, provided the purposes for which the information was collected or compiled continue to apply.
- involving research, statistical or program evaluation purposes where the output is in non-identifiable form.

## 9. PRELIMINARY ASSESSMENT

Before a data matching, linkage or sharing arrangement that will be formalized in an agreement begins, government policy (as outlined in *FOIP Guidelines and Practices*) recommends that public bodies conduct a preliminary assessment. A copy of that assessment should be provided to the Alberta Information and Privacy Commissioner at least 60 days prior to the intended date of signing.

The purpose of the preliminary assessment is to determine whether an information sharing arrangement, particularly one that involves a data matching or linkage program, is the most practicable and convenient approach to use and whether there is a basis for proceeding in **Part 2** of the FOIP Act. A preliminary assessment should contain the following information:

- the public bodies, levels of government or other organizations involved in the sharing, matching or linkage.
- the legal authority for the collection of personal information. This means

verifying that the underlying authority or requirement for the disclosure is found in a statute of Alberta or Canada (or agreement or treaty); that the collection of information is for law enforcement purposes; or that the collection relates directly to and is necessary for an operating program or activity of a public body (**section 33**).

- whether indirect collection of personal information is permitted because the individual has authorized indirect collection; because collection without consent is permitted under **section 34(1)**; or because direct collection might result in the collection of inaccurate information (**section 34(3)**).
- whether individuals should be notified of the new use or disclosure of their personal information; justification for not notifying individuals; and the suggested procedures for notification, if applicable.
- an analysis of the need to disclose each of the identifiers to meet the specific objective.
- a description of the types of personal information or data elements that will be shared for matching or linkage purposes and what will be done with the results of the match.
- the procedures for notifying affected individuals of any action resulting from the matching (or justification for not notifying individuals). If affected individuals aren't notified, a description of the matching program should be added to the relevant personal information bank(s).
- the means for ensuring that the information used in the matching program, as well as the information generated, is accurate and complete (**section 35**).

- whether the consent of individuals to the use and/or disclosure of their personal information is required, the justification if consent is not required and the procedures for obtaining any required consent (**sections 39 and 40**).
- the authority for disclosure of personal information for matching purposes (**section 40**).
- the start and completion dates for the information sharing, matching or linkage and, where applicable, the schedule of any required periodic or continuing matching programs.
- the results of any pilot projects designed to test the proposed matching process.
- the records retention and disposition schedule for information used in or produced by the sharing or matching program, including program protocols used to establish the linkage between sets of personal information.
- the procedures that will ensure the security and protection of the information that is being shared. The personal information and computer systems must be safeguarded from accidental and deliberate threats to the confidentiality, availability and integrity of the data (**section 38**).

A cost/benefit analysis or business case for the personal information sharing initiative should also be conducted at this stage. However, this document is usually retained by the public body for future reference purposes and not forwarded to the Commissioner for comments, as part of the preliminary assessment. The cost/benefit analysis should include:

- the projected or actual resource expenditures (direct costs, data processing and telecommunication costs, administrative overhead and any

costs associated with contracting out activities.

- alternatives considered.
- funds that may be recouped through voluntary repayments or formal collection action.
- savings due to termination of ineligible benefits, the denial of benefits that would otherwise have been approved, the deterrent effect of the program and savings relative to other methods of data collection or compilation.

## 10. COMPONENTS OF PERSONAL INFORMATION SHARING AGREEMENTS

### 1. Names of the parties to the agreement:

The public bodies, levels of government or other organizations that are the sources or recipients of the personal information being shared are the parties to the agreement.

### 2. Preliminary recitals: The following information should be included in the preliminary recital clauses or preamble:

- the legal authority (statute, agreement or treaty) for the duty or obligation which underlies the sharing or exchange of personal information.
- the authority for the collection of personal information pursuant to the agreement (**sections 33, 34**).
- whether the disclosure is a consistent use of the personal information originally collected (**section 41**).

- the authority for the disclosure of personal information pursuant to the agreement (**section 40**).

- if (one of) the disclosure(s) is for research purposes, statements showing that the requirements of **section 42** have been met.

- the authority for the public body or other organization to enter into an agreement (e.g. section 10(2) of the *Government Organization Act* for provincial government departments or agencies).

### 3. Purpose of agreement: The purpose and reason for the information sharing arrangement should be identified. For example, wording for a general statement clause could be that the agreement will put into place a formal mechanism for the sharing or exchange of personal information between the parties for certain stated purposes (see By Purpose of Sharing on page 4).

### 4. Research purpose: If (one of) the purpose(s) is for research, include clauses dealing with the preparation and release of reports, studies, statistical tables; the need for consent of the other party(ies) with the overriding concern being to ensure and protect the privacy of individuals, to act in good faith and not to unreasonably withhold consent. Cells in a statistical table should not be based upon fewer than 10 individuals.

### 5. Identifying the personal information to be shared: For each of the purposes stated in the

agreement, the data elements or description of the personal information to be shared or exchanged should be identified. There should also be a clause stating that the personal information identified will only be used for the stated purpose(s).

6. **Use of personal information:** The agreement should clearly identify how the personal information shared under the arrangement is to be used. Secondary use should be limited or prohibited. The parties to the agreement should be limited to the uses listed.
7. **Disclosure of personal information:** The agreement should place restrictions on disclosure of personal information but should not stand in the way of disclosure required for law enforcement purposes. A recipient that is not a public body or local public body under the FOIP Act must be required to treat the personal information it receives with the same sensitivity as is required by public bodies under the Act.
8. **Providing notification:** Include a clause or clauses about how the individuals or affected groups will be notified about the use or disclosure of their personal information. Notification may be general or specific to the individual and could be given at the time the individual originally provides the information to a public body.
9. **Mechanism for the sharing/exchange of personal**

**information:** This clause should state the method and frequency of the sharing, matching or linkage and how changes in technology will be dealt with. The method may involve, for example, the exchange of computer tapes or secure electronic data transmissions.

10. **Accuracy and completeness of personal information:** A clause should state that the parties will verify the personal information received from a third party independently before it is used to make administrative decisions about an individual.
11. **Requests for correction of personal information:** A clause should deal with the handling of requests for correction of personal information.
12. **Security of personal information:** The agreement should state all the administrative, technical, physical or other safeguards required to protect the confidentiality and security of the information shared, especially with regard to its use and disclosure (e.g. measures to prevent unauthorized access, use or further disclosure). It should also identify what controls will be used over records that are subject to the agreement.
13. **Retention and disposition of personal information:** The agreement should specify how long the shared personal information is to be kept and whether the information is to be returned to the source or destroyed by the recipient and disposal standards expected. If

a party is a public body under the FOIP Act, (but not a local public body) it must adhere to the Records Management Regulation and any applicable approved retention and disposition schedules. A federal body that is a party must adhere to the *National Archives Act*. Local public bodies must adhere to their own approved retention and disposition schedules (**section 3(e)** of the FOIP Act).

**14. Responsibilities of the parties:**

The agreement should specify the responsibilities of each party for carrying out the agreement and that each party will be responsible for the actions of its employees, agents and contractors with respect to the use, disclosure and disposition of the personal information that is subject to the agreement.

**15. Consequences of improper use or disclosure:**

The agreement should specify the consequences of using or disclosing the personal information improperly or without authority. For example, a clause could be included stating that the sharing arrangement will cease if a recipient party is found to be improperly disclosing the shared information and that improper use or disclosure may be subject to the offence and penalty provisions of the FOIP Act (**section 92**).

**16. Conducting audits:** A clause may be included allowing for periodic audits of the sharing arrangements to be conducted to ensure compliance with **Part 2** of the FOIP Act or with the federal *Privacy Act* (if a federal

government department or agency is a party).

**17. Commissioner's jurisdiction:** If a federal government department or agency is a party, the agreement should specify whether the personal information received by a provincial public body will be subject to the FOIP Act (or to the *Privacy Act*, if the information is received by a federal government department or agency) and how any jurisdictional issues between federal and provincial legislation and between federal and provincial commissioners may be resolved.

**18. Commencement and**

**termination:** The agreement should specify the time period during which the information sharing will take place. It should be limited to avoid a sharing of personal information when it is no longer needed. If the arrangement is anticipated to be over a longer term, the time period should be limited but the agreement can have a clause allowing for renewal if the arrangement is still necessary.

**19. Amendments:** The agreement should contain a clause that allows for amendment(s) in writing with the mutual agreement of the parties.

**20. Other general provisions:** The agreement may include other clauses dealing with any financial arrangements between the parties; and the need to give each other reasonable notice of changes in policy or legislation likely to impact the agreement. Any successors should be bound by the

agreement. These other provisions must not either require or permit an activity that contravenes the FOIP Act.

- 21. Signing authority and contact names:** The agreement should contain contact names, titles, addresses and phone numbers of appropriate officials of all parties. This information can be used in case changes to the agreement are being contemplated or notices regarding the publishing of research studies or other notices become necessary. The public can also use this name and number to learn more about the information sharing. The agreement should be signed by the “head” of a public body (or by whomever has been delegated the responsibility to sign such agreements) and by officials at similar levels in other organizations.