Privacy Primer

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Records Management 101

What is a Record?

Any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, regardless of physical form or characteristics.

This includes, but is not limited to emails, voice messages, reports, photographs, sticky notes, text messages, electronic documents on a CD or USB key, a machine-readable record, etc.

A record is defined by its content, not its format.

Responsibilities of Staff

- The College has a legal duty to preserve records
- Records should be organized and easy to retrieve (record retention schedule)
- The College has a duty to preserve personal information for access purposes – one year after use for records of PI unless subject of PI consents to earlier disposal
- Protect Records: Technical, Administrative and Physical Safeguards
- Record disposal and destruction schedule

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Official vs. Transitory Records

Official Records

Records in any format or medium that document the College's business activities, rights, obligations or responsibilities or recorded information that was created, received, distributed or maintained by staff or appointed officials of the College in compliance with a legal obligation.

This applies to the **original** record only. All copies/duplicates are considered transitory.

Official records must be preserved and retained according to the College's retention requirements.

Transitory Records

Records kept solely for convenience or reference, of limited value in recording the planning or implementation of College policy or programs.

Transitory records have a temporary utility and are not required for statutory, legal, fiscal, administrative, operational or archival purposes.

Despite their short-term value they may contain sensitive and confidential or personal information. If so, they should be disposed of in a secure manner.

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How we make records available

Fleming College manages its information, also called “records”, to make them easier to search, use, and access for staff, students, and the general public.

Records are made available in several ways:

- **Publicly available-** any individual can search the College’s website to see if the information they seek is already available or contact the appropriate department.
- **Routine disclosure-** program areas automatically make certain information available to the public when it is requested. Some requests for information that are routinely fulfilled do require the payment of a fee, e.g. transcript and course outline requests.
- **Proactive disclosure-** the College publishes information in the absence of any request, in formats such as brochures, reports, and policies.
- **Formal FOI request-** when a department or program area is unable to fulfill a request for information, an individual may make a formal Freedom of Information request.

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PROVINCIAL PRIVACY LEGISLATION

Freedom of Information and Protection of Privacy Act (FIPPA)

- FIPPA came into force on January 1, 1988
- Applies to provincial ministries and agencies, hospitals, universities, colleges
- Its counterpart is the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), which governs municipal institutions such as cities, townships, and local boards.

Personal Health Information Protection Act (PHIPA)

- PHIPA was established in 2004 to regulate the collection, use and disclosure of personal health information by “health information custodians.”
- Fleming College is considered a health information custodian under PHIPA in the provision of the services provided by Student Health Services, Counselling Services, and the Massage Clinic.

The Office of the Information and Privacy Commissioner of Ontario is the independent provincial body that oversees these acts.

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Other privacy legislation you may have heard of…

Personal Information Protection and Electronic Documents Act (PIPEDA)

- Federal legislation that governs how private companies and not-for-profit organizations engaging in commercial activities can handle personal information.

Access to Information Act

- Ensures a right of access to records that are under the control of federal government institutions.

Privacy Act

- Protects the privacy of personal information held by federal governments departments and agencies.

General Data Protection Regulation (GDPR)

- A regulation in European Union law on data protection and privacy in the European Union (EU) and the European Economic Area (EEA). It also addresses the transfer of personal data outside the EU and EEA areas.

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Access and Privacy under FIPPA

As an educational institution in Ontario, Fleming College is subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (FIPPA). In the college context, FIPPA has three main purposes:

1) To provide all members of the public with the right to access all non-personal information in College held records. This right is limited only by specific exclusions from jurisdiction and exemptions from disclosure.
2) To provide individuals whose information is held by the College with the right to access their own information, to make corrections to their personal information when necessary and attach a statement of disagreement when a correction is requested but not made.
3) To protect the privacy of personal information held by the College by setting uniform standards for the collection, use, disclosure, retention, and destruction of that information.

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The Freedom of Information Request Process

Under FIPPA, every person has a right of access to a record or part of a record in the custody or control of an institution unless a specific exemption in the legislation applies.

Once it has been established that a request for information cannot be fulfilled through routine disclosure and is subject to FIPPA, the requester should be directed to contact the Privacy and Policy Officer who will:

- Assist the requester in clarifying what records they want. A large, poorly defined request can be time-consuming and costly.
- Direct the requester to complete the FIPPA Request Form and submit it along with a $5 application fee. If a requester is seeking personal information, additional documentation will be required.
- Upon receipt of a complete request and application fee, reach out to any program areas that may have records that are responsive to the request.

The FOI request process is designed to facilitate the provision of records currently in the custody or control of an institution. There is no obligation to create a record in response to a request under FIPPA.

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The FOI Request Process, continued

When program area receives a memo regarding a formal FOI request, they will be advised of the parameters of the request and asked to provide responsive records.

The identity of the requester remains confidential, although the category of requester can be disclosed if it will not hinder access (e.g. lawyer or journalist). Records are to be provided to the Privacy and Policy Officer within one week.

Extension

If staff require additional time to process a request due to its complexity or volume, they should contact the Privacy and Policy Officer as soon as possible after receiving an email.

Fee Estimate

If staff determine that searching for and providing records is going to take a substantial amount of time and/or staff resources, they should alert the Privacy and Policy Officer as soon as possible. FIPPA sets out various fees that apply to the processing and release of records.

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General Records vs. Personal Information

Records fall under two categories:

General records- related to the activities and operations of the College, i.e. fiscal, legal, support decision-making

Personal information- information about an identifiable individual; reveals something personal. Includes:

- age race, ethnic or national origin, religion, gender, sexual orientation, family/marital status
- medical, psychological, education, criminal, employment history or financial transactions of individual
- identifying number assigned to the individual, e.g. OHIP number, SIN
- private correspondence sent to the College and replies that would reveal the contents of the original correspondence

Personal information does NOT include an individual's business contact information. Their professional title, phone number, email, address and fax number at their place of employment can all be made publicly available.

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FIPPA- Excluded Records and Exemptions

Some classes of records are excluded from FIPPA in their entirety, including:

- Negotiations between the College and an employee
- Meetings or discussions about labour relations in which the College has an interest

The general right of access to records under FIPPA is subject to limited and specific exemptions.

Mandatory Exemptions

- Personal Privacy- one of the keystone provisions of FIPPA. Protects the personal information of individuals other than the requester
- Third Party Information- protects confidential information supplied to institutions by a third party

Discretionary Exemptions include:

- Closed Meetings- protects the confidentiality of the deliberative processes of governing body
- Economic and other interests- allows institutions to protect certain proprietary information
- Solicitor-client privilege- covers records subject to the common law solicitor-client privilege, as well as records prepared in contemplation of litigation

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Records of Research or Teaching

With limited exceptions, FIPPA does not apply to records about or associated with research or records of teaching materials

Research records include records that are collected, prepared and maintained for a research purpose. The research may be proposed by a College employee, student, research assistant, private research partner or other individual, group or organization associated with the College.

Teaching materials are records that are collected, prepared and maintained for a teaching purpose.

Most research-related records and teaching materials are excluded from access under FIPPA. This includes material such as research and study notes, reports, manuscripts, and publications, unless they were specifically commissioned or prepared under contract for the College or in the context of administrative work.

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Scenario

A letter comes into your department from a lawyer's office who claims to be representing a former student with respect to injuries she sustained in a motor vehicle accident that occurred when she was a student at Fleming. The letter requests a copy of the student's "entire Fleming College file".

Q: What considerations might there be with this request for information?

Q: What would the recipient of this letter's next steps be?

Q: How would the College ultimately respond to this request?

Collection of Personal Information

In order to conduct the operations of the College, we need to collect, use, and disclose personal information. As an educational institution, we must ensure that the way we manage personal information is in accordance with the privacy rules outlined in FIPPA.

FIPPA requires us to:

- Collect only the information needed to perform our lawfully mandated functions.
- Use the information we collect only for the purpose for which it was collected or for a consistent purpose.
- Only disclose personal information to the individual to whom it relates (except in limited circumstances specified by FIPPA).
- Inform individuals when we collect their personal information and make clear what we intend to do with the information.

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Notice of Collection

When personal information is collected by the College, either directly from the person about whom the information relates, or indirectly from another source, the College must inform the individual that the collection has occurred. The notice to the individual must state:

- The legal authority for the collection;
- The principal purpose(s) for which the personal information will be used; and
- The title, business address, and telephone number of an official of the College who can answer the individual's questions about the collection.

Can we ask a student for personal information?

Yes, but only as necessary for course or program delivery. And we must always provide a notice of collection. We may not use this information for another purpose without the consent of the student.

Can we take attendance?

Yes, but try to be privacy aware. Using complete student numbers on sign up sheets or passing around a class list is discouraged. Use of preferred names is encouraged.

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Use of Personal Information

When sharing of personal information occurs between employees of the College, that constitutes a use of personal information.

The two principles that we need to remember when we share student information, or the information of any individual within the College are:

- FIPPA allows the sharing of information within the institution in order to do our jobs. We may only use the personal information we collect for the purpose for which it was collected or a consistent purpose.
- That being said, even within the College, information is only to be shared on a "need-to know-basis".

Can we share personal information about our students with other College employees?

Yes, but only with the employees whose duties and responsibilities authorize them to have access to that information and who need the information in order to carry out their duties.

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Using Personal Information for Fundraising

In order for an educational institution to use personal information in its alumni records, either for its own fundraising activities or for the fundraising activities of an associated foundation, the educational institution shall:

- On first contact for fundraising purposes, notify the individual to whom the personal information relates of their right to request that their information cease to be used for fundraising purposes;
- Periodically, over the course of soliciting funds for fundraising, give notice to the individual to whom the personal information relates of their right to request that their information cease to be used for fundraising purposes; and
- Periodically, in a manner that is likely to come to the attention of individuals who may be solicited for fundraising, publish a notice of the individual's right to request that their personal information cease to be used for fundraising purposes.

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Disclosure of Personal Information

Section 42(1) of FIPPA governs the disclosure of personal information in the day-to-day activities of an institution, setting out specific circumstances under which personal information may be disclosed, including:

- For a purpose consistent with the purpose for which it was originally collected
- With express consent from the individual to whom the information relates.
- To a consultant or agent of the College in order to perform duties on behalf of the College
- Where required by law
- Where there is risk of serious bodily harm to an individual
- In compelling circumstances involving an individual's health or safety
- For the purpose of its own fundraising activities or the fundraising activities of an associated foundation, subject to certain requirements

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Disclosure for Research Purposes

FIPPA allows the disclosure of personal information for research purposes if,

- The disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
- The research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
- The person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- If the disclosure does not constitute an unjustified invasion of personal privacy.

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Disclosing Student Personal Information

- Until an individual graduates, all information pertaining to their academic history is considered to be personal information and must be treated as confidential by the College. All inquiries about current students (or former students who did not graduate) no matter who from (including media or parents) is to be met with the same response – we cannot confirm or deny enrollment.
- Ideally, marks should only be posted in secure environments. If it is necessary to post marks in a public place, steps should be taken to anonymize the individuals. For example, use only the last four digits of the student number and scramble the order. Do not leave graded assignments in a public place for pick-up. Grades and comments should be written on an inside page.
- We can only post student personal information online if we obtain their permission first. If student information is to be used for promotional purposes, formal consent must be obtained.

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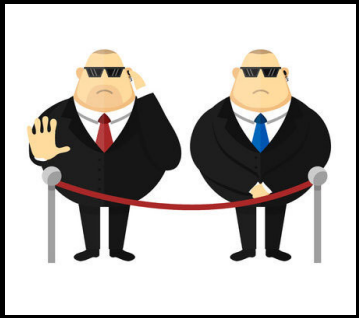

Responding to Requests for Disclosure

Disclosure to law enforcement agencies

Under FIPPA, educational institutions may disclose personal information to a law enforcement agency in Canada, such as a police service, in certain situations.

Generally, a subpoena, warrant or court order, the scope of which must be carefully reviewed before disclosing, is required.

Staff should not reveal information about a student to police without prior consent or a warrant.

Ultimately, inquiries from law enforcement personnel that pertain to students should be directed to Campus Security.

Disclosure for reference purposes

Sharing personal information outside of the College should only take place with the consent of the individual.

This consent may be obtained from the person or institution requesting the reference or it may be obtained directly from the student. Be sure to obtain written proof of consent and keep it for at least one year.

Without consent, we are not at liberty to disclose any information about the individual, including their registration status.

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Reference Request Form

The Student Reference Request Form and accompanying guideline were developed to outline a formal, consistent process for responding to student requests for references.

This form empowers students to decide what aspects of their personal information they want the referee to share, and with whom.

It provides the basis for a mutual understanding of the nature and scope of the information that will be disclosed by the referee, mitigating the potential for miscommunication.

Furthermore, documenting consent with regard to disclosures of personal information protects the referee and the College.

The Student Reference Request Form can be found on the Career Services site.

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Scenario

A parent emails a faculty member, requesting that they contact them by telephone to discuss their son's progress in their class. They indicate that they have been advised by their son that he is failing the class, and they want to know what steps he can take to bring his grade up.

Q: Can the faculty member have an informal discussion with the parent about the student?

Q: Does the faculty member have any responsibility to advise the student of the request or seek their consent?

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Privacy Breaches

What is a Privacy Breach?

A privacy breach occurs when personal information is collected retained, used, or disclosed in ways that are not in accordance with the provisions of FIPPA.

For example, personal information may be lost (a file misplaced), stolen (a laptop taken from an employee's car), or inadvertently disclosed through human error (a fax intended for person A is mistakenly sent to person B).

How to respond to a Privacy Breach

Upon learning of a privacy breach, immediate action should be taken. When faced with a potential breach of privacy, the first two priorities are:

Containment

Identify the scope of the breach and take steps to contain it.

Notification

Identify those individuals whose privacy was breached and, barring exceptional circumstances, notify those individuals accordingly.

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Securing Personal Information

FIPPA requires that the College protect personal information from unauthorized access, use and disclosure.

For electronic records, security measures should include:

- Positioning terminals to protect information on screen from view of passers-by
- Logging off when leaving desk unattended
- Password protection for electronic systems
- Encryption
- Avoid transmitting personal information by email

For paper records, security measures should include:

- Clean desk policies
- Locking file cabinets when unattended
- Locked file rooms
- Coded file labels
- Careful use of fax machines
- Ensuring documents and data devices are secure in transit

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Retention of Personal Information

FIPPA requires that personal information must be retained for a minimum of one year after its last use to ensure that an individual has a reasonable opportunity to obtain access.

In some cases, the operational requirements of the College or government regulation will require that records be retained for longer periods.

Exams, essays and other student work should be kept as long as is necessary for the student to exhaust all avenues of appeal or at least one year, whichever is longer.

The use of the personal information is important in determining retention requirements. For instance, personal information collected on surveillance video cameras would not be considered used if the tapes are not reviewed for security incident investigations. Therefore, shorter retention periods can be applied to surveillance tapes that have not been ”used”.

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Disposal of Records

The College Data Record Retention and Disposition Policy requires each department to create and follow its own data retention and disposition schedule.

Official records must be only be disposed of:

- After they have met their retention requirements; and
- In an appropriate way.

Paper records that contain personal or confidential information must be securely shredded.

For electronic records, ITS can be enlisted to ensure secure destruction.

Transitory records can be disposed of when they are no longer useful (securely, if the records contain personal or confidential information).

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Thank you!

For more information, please visit the Access to Information and Protection of Privacy site at:

https://department.flemingcollege.ca/foi/

Or reach out to the Privacy Officer at:

freedomofinformation@flemingcollege.ca

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