



October 15, 2020

Liz Sutherland
Director of Policy
Ontario Nonprofit Network

Dear Liz Sutherland,

AFP Canada appreciates the opportunity to provide input to ONN regarding its response to the Ministry of Government and Consumer Services' discussion paper "Improving private sector privacy for Ontarians in a digital age". We hope that this will offer additional considerations from a fundraising perspective.

The Association of Fundraising Professionals (AFP) represents 29,000 individual fundraisers and charities that raise more than \$115 billion annually for charities around the world—equivalent to nearly one-third of all charitable giving in North America. In Canada, AFP's 3,300 members in over 21 chapters work for more than 1,800 charities across the country and raise billions of dollars every year.

While AFP Canada's mandate is a national one, we recognize the importance of these proposed privacy reforms. We believe that the potential impact on fundraising must be considered as part of this process. We fully support ONN's recommendations for sector engagement, avoiding a one-size-fits-all approach and harmonizing with the rest of Canada.

Charities have made significant efforts and investments to understand existing and prospective donors' interests and preferences. This activity stems from a desire to treat supporters with respect, by better understanding their charitable interests; the ways in which they prefer to communicate; and to broaden revenue streams for fundraising entities. Changes to legislation and regulations that inadvertently suppress the ability of charitable fundraising entities to generate revenue would hinder the ability of organizations to meet goals that are critical to the health and wellbeing of Ontarians. Please see below for our responses to specific recommendations currently under consideration.

Increased Consent and Clear Transparency

*For all other collections, uses, and disclosures of personal information, the organization would need to obtain affirmative, demonstratable, informed, and unambiguous consent. Requiring individuals to “opt-in” to the collection, use, or disclosure would set the default setting as the most privacy protective option. Enhanced consent and transparency provisions would not allow organizations to collect information unconditionally but enable more explicit agreement and understanding between individuals and their service providers.
(Ontario Private Sector Privacy Reform page 5)*

Many charities would be unable to comply with the enhanced consent and transparent privacy guidelines. It must be noted that small and mid-sized organizations in the sector are often at a disadvantage in terms of staffing levels and resources. According to Mark Blumberg’s review of CRA charity listings, more than 50% of Canadian charities have revenues under \$150,000. Many of these organizations are entirely driven by volunteers. These organizations may face undue pressure in implementing new or improved systems governing the collection and use of an individual’s information. It is rare for organizations of this size to have IT infrastructure and personnel, which hinders their ability to quickly adjust to changing technology needs.

In addition to the potential administrative burden that increased consent might have on charities, the move to “opt-in” consent if applied in a blanket way to all communications will seriously hamper charities’ ability to find new donors and to communicate effectively with existing donors. In jurisdictions where strict opt-in consent has been applied, the substantial administrative cost to charities has paled in comparison to lost revenue due to the inability of charities to solicit donations from donors where opt-in consent is difficult to obtain. At the very least, there must be room for “implied consent” for charities who have a relationship with existing donors.

AFP Canada recommends that an exemption be provided for nonprofits and charities (similar to CASL – see <https://us1.campaign-archive.com/?u=005f6731841412b698044ce64&id=9a3bb1dba1&e=95345016e8> in cases where adhering to privacy guidelines would adversely impact the organization from carrying out its mandate.

Protocols should be developed for how an individual can withdraw their consent (e.g. a request in writing to an organization; a secure link via their website; standard disclaimer in electronic communications comparable to ‘unsubscribe’ functions).

Enforcement of the legislation should be carried out in a series of warnings with educational components before more serious penalties (e.g. fines) are assessed.

Repurposing and Derived Data

Data that is “derived” from personal information is data that companies may have about customers that was not directly supplied by the customer. This kind of data (such as assessments or evaluations) repurposes personal information that has been previously supplied,

as well as other recorded behaviour (such as web-browsing habits). For example, companies may categorize customers based on observed shopping habits, or develop other insights about an individual's routine actions.

(Ontario Private Sector Privacy Reform page 8)

Under PIPEDA, personal information includes any factual or subjective information, recorded or not, about an identifiable individual. This includes information in any form, such as:

- age, name, ID numbers, income, ethnic origin, or blood type;
- opinions, evaluations, comments, social status, or disciplinary actions; and
- employee files, credit records, loan records, medical records, existence of a dispute between a consumer and a merchant, intentions (for example, to acquire goods or services, or change jobs).

[\(https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda_brief/\)](https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda_brief/)

Charitable organizations employ strategies and tactics that incorporate the repurposing of information from publicly available sources, seeking to gain insight about existing and prospective donors' 'capacity' to donate, which is partly based on estimates of relative levels of personal financial wealth (e.g. publicly available information about the selling price of a dwelling or business).

Fundraisers develop, maintain and employ derived data such as capacity assessments which categorize existing and prospective donors' and are based on both publicly available information as noted above, and information created through transactions and interactions with existing and prospective donors (e.g. charitable giving; volunteering; advocacy). This information enables a charity to identify potential supporters who are aligned to the cause and thus ensure that their fundraising efforts are more efficient and effective.

Under any new legislation or regulation, the definition of personal information should be very clearly communicated so that charities are not burdened with unnecessary administration of data that is not beneficial to the protection of the interests of Ontarians.

The definition of derived data, and the way in which fundraising entities are required to manage such data are critical issues in the success of charities in meeting their missions.

It is recommended that further consultation regarding definitions be undertaken in a timeframe that permits more comprehensive engagement with leaders within the nonprofit and charitable sector.

The most important consideration is that the charitable sector, and especially the fundraisers within it, need to have a seat at the table for any discussions about tightening privacy regulations. What do we need? We need to be heard, along with industry, in public consultations. We are a significant part of the economy and we do very important work, often on behalf of the most vulnerable members of our society. A new privacy code which constrains

our ability to solicit funds on behalf of beneficiaries could have tragic consequences. There is no question that citizens have privacy rights that need to be protected but these must be balanced by the rights of the beneficiaries whom we help.

We need to establish the absolute necessity for charities and fundraising to be represented at the table where substantive and detailed discussions are going on. The devil is very often in the details, and unless we are represented, there is a good chance that the new regulations will have unintended negative consequences.

AFP appreciates this opportunity to submit these considerations. For additional information please contact Lisa Davey, vice president, AFP Canada, at 613-407-7169 or lisa.davey@afpglobal.org.

Sincerely,

Paula Attfield
Chair, AFP Canada