

Manitoba Ombudsman

REPORT UNDER

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT AND THE PERSONAL HEALTH INFORMATION ACT

CASE 2020-0184

FIPPA AND PHIA PRIVACY COMPLAINT: COLLECTION OF PERSONAL AND PERSONAL HEALTH INFORMATION

PROVISIONS CONSIDERED: FIPPA -- 2, 36(1), 36(2), 37(2), 49 PHIA -- 2, 13(1), 13(2), 28

REPORT ISSUED: March 31, 2023

SUMMARY: Our office received complaints from the public about Manitoba Conservation and Climate's¹ (the department) collection of personal and/or personal health information through a new online elicensing system for the sale of various wildlife, fisheries and other outdoor licences and permits. Our office notified the department that we initiated an investigation to determine if the collection of personal and/or personal health information by the elicensing system is compliant with the Freedom of Information and Protection of Privacy Act (FIPPA) and the Personal Health Information Act (PHIA).

Our investigation found that the elicensing system is structured as a two-step process: first, a person or business must set up an online "customer account." Second, a person or business may purchase various licences and permits through their customer account. Both steps of the process require the collection of personal and/or personal health information for distinct purposes. The type and kind of personal information needed for both steps of the elicensing system is necessarily varied: to set up a required customer account, for example, requires different personal information than is needed to purchase a hunting licence. Once created, the online customer account remains available to individuals or businesses to sign into at any time to purchase permits and licences, and print or re-print them for use in the field.

The collection of personal information must be limited to only that which is necessary for the purpose specific to either of the elicensing system's two-step process – either the creation of a customer account or the subsequent purchase of a licence or permit. For example, the collection of personal information for a customer account must be limited to contact information, while the personal information collected for a hunting licence must be limited to the specific information needed such as Hunter Education

¹ In January 2023, the department name changed to Manitoba Natural Resources and Northern Development.

Certification Number, and height, eye colour, and other identification details of the individual wishing to hunt.

Our investigation found that the department's elicencing system contravenes FIPPA and PHIA in that it collects more personal and/or personal health information than is reasonably necessary in the first step of the process, the creation of a customer account. The elicencing system collects personal and/or personal health information – such as driver's licence numbers, passport numbers, personal health information numbers and others – in contravention of subsections 36(1) of FIPPA and 13(1) of PHIA.

Because our investigation found that the customer account step of the elicencing system contravenes FIPPA and PHIA, our office did not proceed to investigate the collection of personal and/or personal health information at the second step of the process – the purchasing of individual licences and permits. We acknowledge that the creation and use of a customer account within the elicencing system is distinct from the purchase of specific licences and permits. The department should clearly determine what personal information is necessary for purchase of *each* of the available permits and licences to ensure that the collection of personal information is limited to only that which is necessary and authorized under FIPPA. Therefore, we recommend that the department finish its Privacy Impact Assessment (PIA) of both steps of the system, and make required changes to ensure compliance with legislation at all stages.

Our office also recommends that the department immediately cease collecting personal health information for customer accounts as it contravenes PHIA. We further recommend the destruction of all personal and personal health information that has already been collected to date that contravenes PHIA or FIPPA.

Similarly, we suggest that the department re-examine if the collection of birth dates for customer accounts is necessary. If it is not necessary to collect birth dates for customer account set-up, we recommend that the department cease collection of such personal information and destroy all collected to date.

Finally, our office recommends that the online privacy statement be updated to be both accurate, comprehensible, and informative. The department should be clear that personal information is collected for two distinct purposes at two distinct stages: first, the creation of a customer account necessitates the collection of certain personal information; second, the purchase of specific licences and permits requires the collection of different additional personal information. This may best be done with two distinct privacy statements. The privacy statement or statements should be written in plain language to ensure that visitors to the elicencing site can understand the purposes for the collection, use, and any disclosures of their personal information. The privacy statement(s) should also include notice that personal information collected via the elicencing system is stored in Canada, and is not shared or sold to third parties. Further, we note also that while including the telephone number of a department representative in a privacy statement is not a requirement of FIPPA or

PHIA, it is recognized as a best practice to assist individuals who may have questions about the collection of their personal information.

BACKGROUND

On April 9, 2020, the Manitoba government issued a news release announcing its launch of an online elicensing system for the sale of recreational outdoor licences and permits, specifically hunting, angling and provincial park vehicle permits (annual park passes). The news release indicated that it would be phasing in other licences and permits available through the elicensing system over time. In December 2020, the online elicensing system added the ability to apply for a permit to cut Christmas trees on Crown land. The elicensing system was a joint initiative of Manitoba Conservation and Climate and Manitoba Agriculture and Resource Development².

Prior to the existence of the elicensing system, Manitoba recreational outdoor licences and permits were available for in-person purchase from various outlets including local stores; vehicle park permits were available at park entrances. At that time, personal information that may have been collected from individuals depended on the specific licence or permit being acquired. For example, personal information such as name, address, date of birth, and confirmation of a hunter education certificate was collected in the case of a hunting licence purchase. No personal information was collected from individuals purchasing park vehicle permits.



Our office reviewed communications materials that explained the intent of the online system was to reduce the department's carbon footprint, improve delivery of service, and simplify the licence purchase process. Licences and permits would be available for purchase online 24 hours a day, seven days a week, and could be reprinted if lost or damaged. The online system would also be expandable to increase the number of applications, licences or permits available through the elicensing system. Amendments were made to the General Hunting Regulation and the Fishing Licensing Regulation to include purchase of angling and hunting licences in the system.

The department indicated that the Manitoba government entered into an agreement with vendor, RA Outdoors (Aspira), after a tendering process to modernize the department's licensing program to deliver various wildlife, fisheries and other licences through an online, Internet-based service. The agreement included an Information Manager Agreement that identifies RA Outdoors as the Information Manager, and sets out its obligations for the protection of Manitoba data, including personal and/or personal health information. RA Outdoors' elicensing system collects personal and

² In January 2023, Manitoba Conservation and Climate changed to Manitoba Natural Resources and Northern Development. In January 2022, Manitoba Agriculture and Resource Development changed to Manitoba Agriculture.

personal health information from individuals on behalf of the department for various purposes including online customer account set up and maintenance, and issuing receipts, licences, and permits. RA Outdoors also conducts surveys on behalf of the department, and maintains personal and personal health information to support the department's administration of the laws under which the permits and licences are issued.

After the launch of the elicensing system, members of the public contacted our office expressing concern regarding the personal and personal health information requested to set up a customer account, an account which must be created prior to making online purchases of permits and licences. No option to simply purchase a licence or permit as a "guest" is available; a customer account must first be set up before any purchases can be made online.

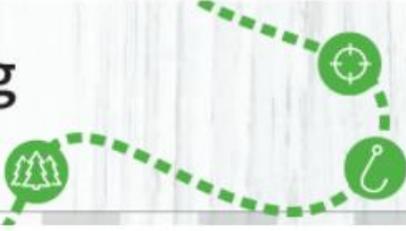
Complaints to our office reflected concerns about:

- the collection of personal and personal health information including driver's licence number, passport number, and personal health information number (PHIN) for the purpose of setting up a customer account on the elicensing system;
- the storage of personal and personal health information, as it appeared that the vendor managing the elicensing system, RA Outdoors (Aspira), is based in – and might therefore potentially store the collected information in – the United States;
- the possible disclosure of individuals' personal and personal health information by RA Outdoors (Aspira) to third parties, as the privacy policy on the Aspira website stated: "We may share your information, including personally identifiable information, with non-affiliated and affiliated third parties."

In response to the concerns we received, our office reviewed the information on the Manitoba Conservation and Climate's³ elicensing website and noted that personal and personal health information including driver's licence numbers, passport numbers, and personal health identification numbers (PHIN) was being collected for the purpose of setting up and signing into an elicensing customer account. Therefore, our office launched an investigation into this matter in May 2020.

³ In January 2023, the department name changed to Manitoba Natural Resources and Northern Development.

Manitoba elicensing




A new online service for the sale of hunting and fishing licences, park vehicle permits and other permits is available at www.manitobaelicensing.ca

This significant improvement to the way you access licences and park permits will be phased in - beginning with hunting and angling licences as well as provincial park vehicle permits.

Using the elicensing system, you will be able to create a customer profile, purchase and pay online for permits and licenses. There will also be the option to purchase licences and permits from Manitoba Conservation and Climate offices around the province.

A digital copy of the licence or permit will be available through your customer profile/account. All you have to do is print a copy of the licence you can carry while hunting or fishing. You will need to print your park vehicle permit and display it in your vehicle.

Manitoba's new elicensing system offers:

- access 24 hours a day, 7 days a week online or by telephone

- access through participating retailers

- ability to immediately purchase and print licences at home

- improved data collection that will enhance program management

Additional Information

[Where can I get a licence?](#)

[FAQs](#)

[Resources](#)

OMBUDSMAN'S DUTIES

The Manitoba Ombudsman has broad powers and duties under FIPPA and PHIA. In addition to the investigation of access to information and privacy complaints, the ombudsman may conduct investigations and make recommendations to monitor and ensure compliance with FIPPA under section 49 and with PHIA under section 28:

FIPPA

General powers and duties

49 In addition to the Ombudsman's powers and duties under Part 5 respecting complaints, the Ombudsman may

- (a) conduct investigations and audits and make recommendations to monitor and ensure compliance*
- (i) with this Act and the regulations*

PHIA

General powers and duties

28 In addition to the Ombudsman's powers and duties under Part 5 respecting complaints, the Ombudsman may

- (a) conduct investigations and audits and make recommendations to monitor and ensure compliance with this Act;*

ANALYSIS OF ISSUES AND FINDINGS

In investigating whether a public body is authorized to collect personal or personal health information under FIPPA and PHIA, our office focuses on three key areas:

1. We determine whether and what type of personal and/or personal health information is collected.
2. We determine whether the public body is authorized to collect the information under FIPPA and PHIA and whether the collection is limited to only the personal or personal health information necessary to accomplish the purpose for which it is collected.
3. We establish whether proper notice is provided to individuals at the time of collection.

Definition of Personal and Personal Health Information

Under FIPPA, personal information means recorded information about an identifiable individual. This includes but is not limited to the following:

- (a) the individual's name,*
- (b) the individual's home address, or home telephone, facsimile or e-mail number,*
- (c) information about the individual's age, sex, sexual orientation, marital or family status,*
- (d) information about the individual's ancestry, race, colour, nationality, or national or ethnic origin,*
- (e) information about the individual's religion or creed, or religious belief, association or activity,*

- (f) personal health information about the individual,*
- (g) the individual's blood type, fingerprints or other hereditary characteristics,*
- (h) information about the individual's political belief, association or activity,*
- (i) information about the individual's education, employment or occupation, or educational, employment or occupational history,*
- (j) information about the individual's source of income or financial circumstances, activities or history,*
- (k) information about the individual's criminal history, including regulatory offences,*
- (l) the individual's own personal views or opinions, except if they are about another person,*
- (m) the views or opinions expressed about the individual by another person, and*
- (n) an identifying number, symbol or other particular assigned to the individual;*

Under PHIA, personal health information means recorded information about an identifiable individual that relates to:

- (a) the individual's health, or health care history, including genetic information about the individual,*
- (b) the provision of health care to the individual, or*
- (c) payment for health care provided to the individual,*
and includes
- (d) the PHIN and any other identifying number, symbol or particular assigned to an individual, and*
- (e) any identifying information about the individual that is collected in the course of, and is incidental to, the provision of health care or payment for health care;*

1. Determination of whether and what type of personal and/or personal health information is collected.

Our office reviewed the elicencing system located at www.manitobaenergyservices.ca to determine if personal and/or personal health information is collected from individuals, at what stage the information is collected, the purpose(s) for the collection, and if the collection is in compliance with FIPPA and/or PHIA. We noted that an individual is required to set up an individual customer account in order to subsequently purchase any licences or permits, and that personal and/or personal health information is collected for this purpose. The elicencing system offered no option to purchase a licence or permit as a "guest"; the purchase of a licence or permit can only be achieved online through a customer account. Therefore, we first reviewed the personal and/or personal health information collected for setup of a customer account.

CUSTOMER ACCOUNT – FIRST TIME CUSTOMER

What is a customer account?

A customer account is a unique one-time account set up to provide access to purchase Manitoba licences, permits and future applications. The account is used to verify eligibility and provide contact information.

How do I create a customer account?

You will be able to create your customer account through the elicensing website. You start by selecting the Create Account option at the top of the screen to set up your customer account.

****If you have previously entered the multilevel draws (1996-2019), you will already have a customer profile that you will have to update. Call 1-877-880-1203 for assistance to find your customer profile, or use the [LOOK UP YOUR PROFILE](#) function.**

The screenshot shows the Manitoba Elicensing website interface. At the top, there is a navigation bar with the Manitoba logo and a language selector for 'français'. Below the navigation bar, there are links for 'HOME', 'PURCHASE LICENCE', 'SPECIAL LICENCE APPLICATIONS', 'DRAWS', 'PARK PERMITS', 'MY ACCOUNT', 'ISSUERS', and 'KEY DATES'. A 'Sign In or Create Account' button is also visible. The main content area is divided into two sections: 'Sign In' and 'New Customer'. The 'Sign In' section includes instructions for existing users and a form with fields for 'Choose an Identifier' (with a dropdown menu for 'Customer ID #'), 'Customer ID #', and 'Password'. A 'Sign In' button is at the bottom of this section. The 'New Customer' section is further divided into 'Individual Accounts' and 'Business / Organization Account'. Under 'Individual Accounts', there is a red circle around the text 'LOOK UP YOUR PROFILE' and a 'Create an Individual Account' button. Under 'Business / Organization Account', there is a 'Create a Business / Organization Account' button.

Click this link for a "[elicensing tutorials page](#)" for a number of tutorials on how to operate the elicensing system.

What is a customer ID number?

A customer ID number is a unique identification number for each person who purchases a licence within the elicensing system. Your customer ID number is used for all hunting and angling licences and park vehicle permit purchases.

Our investigation notes that the creation of a customer account requires certain personal and/or personal health information to be provided by the customer as shown on the webpage below:



Create an Account

* Required

Personal Information

First Name * Middle Name Last Name *

Date of Birth *
Month DE YYYY

Identification

Identification Type *

Email and Password

Email *

Passwords must be at least 6 characters long.

Password * Re-Enter Password *

Contact Details

Phone Numbers

At least one phone is required *

Home Phone # Work Phone # Mobile Phone #

Text (SMS) Phone # Use Mobile Phone

Preferred Phone Number: Preferred Time to Call:

Physical Address

Street Address * Street Address Line 2 Postal/ZIP * Country *

City * Province/State * County

Mailing Address

Mailing Address same as Home Address

In our review of the information being collected to set up customer account, our office notes that some of the following data elements are required while others are optional:

REQUIRED	OPTIONAL
First Name	Middle Name
Last Name	Text (SMS) phone number
Date of Birth	
ONE identification from: <ul style="list-style-type: none"> - Manitoba's Driver's Licence Number or - Canadian's Driver's Licence Number or - Non-Resident Driver's Licence Number or - Passport Number or - Manitoba Health Card Number (meaning PHIN), or - Other (not defined, and includes drop-down menu of country names) 	
Email address	
Password	
Contact details including <ul style="list-style-type: none"> - Phone number (home or work or mobile) - Physical address (street address, city, province/state, postal/zip code, country) 	

Our office also notes that the website displays a question at the bottom of the screen⁴ that states, “*Going Hunting or Fishing?* +Add required information” which, if clicked, offers individuals further windows to add more personal information including:

REQUIRED	OPTIONAL
	Gender
	Eye Colour
	Hair Colour
	Height
	Recognized Status

All of the types of information above, both the required and the optional information, are considered personal information under FIPPA, and one item of information – an individual's Personal Health Identification Number or PHIN – is personal health information as defined under PHIA.

2. Determination of whether the public body is authorized to collect the information under FIPPA and PHIA and whether the collection is limited to only the personal or personal health information necessary to accomplish the purpose for which it is collected.

Our office requested written representations from the department to identify the provisions under FIPPA and PHIA that authorize the collection of personal and/or personal health information by the eliciting system.

⁴ Our image of the webpage on page 9 is a partial image due to space constraints; the question “*Going Hunting or Fishing?*” exists on the webpage at [Create Account - Manitoba Licensing \(manitobaelicensing.ca\)](https://www.manitoba.ca/licensing/create-account).

The department indicated that it is authorized to collect personal information under clauses 36(1)(b) and (c) of FIPPA and 13(1)(a) and (b) of PHIA as the collection of an individual's personal and/or personal health information is necessary and directly related to the use of the elicencing system and is also required for law enforcement purposes. The department also explained that it was authorized to collect personal and/or personal health information under various enactments including the Wildlife Act (C.C.S.M. c. W130), the Fisheries Act (C.C.S.M. c. F90), and the Provincial Parks Act (C.C.S.M. c P20). The department indicated that the collection of personal and/or personal health information is also limited to only that which is reasonably necessary to accomplish the purpose for which it is collected.

Requirements for Collection Under FIPPA

One of the purposes of FIPPA, as set out in clause 2(d), is to control the manner in which public bodies may collect personal information.

Purposes of this Act

2 The purposes of this Act are

(d) to control the manner in which public bodies may collect personal information from individuals and to protect individuals against unauthorized use or disclosure of personal information by public bodies;

A public body must find its lawful authority to collect personal information in subsection 36(1) of FIPPA. The requirements for the collection of personal information by public bodies are set out in section 36(1) of FIPPA:

Purpose of collection of information

36(1) No personal information may be collected by or for a public body unless

- (a) collection of the information is authorized by or under an enactment of Manitoba or of Canada;*
- (b) the information relates directly to and is necessary for an existing service, program or activity of the public body; or*
- (c) the information is collected for law enforcement purposes or crime prevention.*

At least one of these situations must apply for the collection of personal information by a public body to be authorized under FIPPA.

Further, subsection 36(2) of FIPPA limits the collection of personal information to only that which is necessary:

Limit on amount of information collected

36(2) A public body shall collect only as much personal information about an individual as is reasonably necessary to accomplish the purpose for which it is collected.

Requirements for Collection Under PHIA

One of the purposes of PHIA is to establish rules governing the collection, use, disclosure, retention,

and destruction of personal health information.

Purposes of this Act

2 The purposes of this Act are

- (c) to establish rules governing the collection, use, disclosure, retention and destruction of personal health information in a manner that recognizes*
 - (i) the right of individuals to privacy of their personal health information, and*
 - (ii) the need for health professionals to collect, use and disclose personal health information in order to provide health care to individuals;*
- (d) to control the collection, use and disclosure of an individual's PHIN;*

A trustee of personal health information has an obligation under PHIA to collect personal health information only as permitted by the Act. Subsection 13(1) of PHIA requires personal health information to be collected for a lawful purpose connected with a function or activity of the trustee if the collection of the information is necessary for that purpose:

Restrictions on collection

13(1) A trustee shall not collect personal health information about an individual unless

- (a) the information is collected for a lawful purpose connected with a function or activity of the trustee; and*
- (b) the collection of the information is necessary for that purpose.*

Further, subsection 13(2) of PHIA limits the collection of personal health information to only that which is necessary:

Limit on amount of information collected

13(2) A trustee shall collect only as much personal health information about an individual as is reasonably necessary to accomplish the purpose for which it is collected.

Our office reviewed the information collected from individuals at the first stage of the elicencing system, the customer account. We note that some of the required information includes:

- first and last name
- email address
- password
- phone number(s)
- physical address

The site provides an explanation of how the information collected will be used, stating “to contact you and to determine your eligibility to purchase certain products.” We note that FIPPA subsection 36(1) sets out that no personal information may be collected by or for a public body unless at least one of these clauses apply:

- (a) collection of the information is authorized by or under an enactment of Manitoba or of Canada;*
- (b) the information relates directly to and is necessary for an existing service, program or activity of the public body; or*

(c) the information is collected for law enforcement purposes or crime prevention.

Our office notes that the personal information collected – including first and last name, email address, password, phone number(s) and physical address – relates directly to and is necessary for the department to provide people with the ability to set up a customer account to subsequently purchase and print various outdoor licences and permits online. The purchase of various licences and permits is an existing program of the public body and the collection of personal information to issue them is authorized under various enactments. The elicencing system is set up in such a way that requires an individual to have a customer account in order to purchase a licence or permit. Therefore, we find that the collection of these elements of personal information is compliant with FIPPA insofar as the information is necessary for a customer account on the elicencing system. We note, however, that the elicencing system could be changed to offer individuals the option of being a “Guest” to make purchases, and not require the establishment of a “customer account” through which to make purchases. If this option were offered, the elicencing system would only need to collect personal information specific to the licence or permit being purchased, and the transaction being made. For example, this could include vehicle licence plate number for a park permit, and payment information to pay by credit card.

Our office also considered the collection of date of birth for customer accounts on the elicencing system. Both the department’s representations to our office and the elicencing system itself indicate that date of birth is collected to “determine your eligibility to purchase certain products.” Our office notes that setting up a customer account with the elicencing system is not the same as attempting to purchase a licence or permit. Our office also recognizes that each individual type of permit or licence sold from the online elicencing system may have additional and differing personal information requirements, including age restrictions or promotions such as senior discounts. We note, however, that some of the licences and permits do not have any age restrictions at all, such as provincial park vehicle permits which require only specific vehicle licence plate numbers. Therefore, the collection of personal information such as birth dates or ages at the stage of customer accounts *to determine eligibility to purchase certain products* is premature and not necessary, as not all permits and licences have age restrictions. Therefore, our office is of the view that the collection of birth dates or ages and other personal information that is specific to a permit or licence should only take place at the stage of applying for and purchasing that specific permit or licence, not at the customer account stage, as the collection of the additional personal information is not *reasonably necessary to accomplish the purpose for which it is collected* at this point.

We also note that the collection of an individual’s age is different than the collection of the individual’s date of birth. The department should consider if the collection of an individual’s age to purchase specific licences or permits is sufficient before proceeding to the collection of an individual’s date of birth, more sensitive personal information.

Furthermore, it is not clear to our office if an individual’s age is relevant to having a customer account on the elicencing system itself. If there are any age restrictions regarding the acquisition of a customer account, then the collection of an individual’s age would be reasonable and necessary at this stage to ensure the individual is entitled to open a customer account in their name. However, if there is no age restriction regarding customer accounts, the collection of age at this stage is not reasonably necessary and therefore not authorized under FIPPA.

Other Personal Information Collected at the Customer Account Stage: “Identification”

Other personal information collected at the customer account stage includes the following:

- **Identification – one is required**
 - ID type options include:
 - Manitoba Driver’s Licence Number
 - Canadian Driver’s Licence Number
 - Non-Resident Driver’s Licence Number
 - Passport Number
 - Manitoba Health Card Number⁵
 - Other – *not defined, and includes “other” window and drop-down menu of country names*

Our office asked the department about the purpose of the collection of “identification” from individuals setting up customer accounts with the elicencing system. The department explained that the purpose is twofold:

1. To enable people to access their user account and to allow users to retrieve their password if they forget; and,
2. To enable conservation officers to verify the identity of licence or permit holders in the field.

Account access and password retrieval

According to the department, the elicencing system collects “identification” from individuals in order to provide them with account access and password retrieval.

Sign In

If you have used Manitoba elicencing website before or purchased a Manitoba Wildlife, Fisheries or Forestry licence(s) in the past, please sign-in using an identifier and the password.

⁵ Our office notes that “Manitoba Health Card Number” is not defined on the elicencing portal website, but requires nine digits to be entered; therefore, the “Manitoba Health Card Number” means the Personal Health Identification Number or PHIN, and not the Manitoba Health Card Registration Number which is comprised of six digits.

INDIVIDUAL BUSINESS / ORGANIZATION

Choose an Identifier *

Customer ID #

Customer ID # *

Password *

[Forgot your password?](#)

Sign In

The “Identifier” box above includes “Customer ID Number” as the first of a number of options, including various driver’s licence numbers, passport number, health card number or other. The “Customer ID Number” – or Customer Identification Number – is a number that the elicensing system randomly generates for every separate customer account at the time the account is set up. An individual is reminded to keep a record of the Customer ID Number. If an individual did not record or does not recall their Customer ID Number when later signing into their customer account, they are able to click on the “Choose an Identifier” box to choose an alternate “Identifier” – whatever personal information number they had provided the elicensing system during the customer account set up.

Our office considered if the collection of these various “identifier” options – including a driver’s licence number, passport number, health card number or “other” undefined personal information – for the purpose of signing into a customer account complies with FIPPA and PHIA. Our office notes that none of the “identifier” options are *necessary* for the purpose of *enabling people to access their user account or allowing users to retrieve their password if they forget*. Access to a customer account need not require the collection of *additional* personal information, such as driver’s licence number, passport number, and so on, as none of that type of personal information is necessary for the purpose. Rather, any of the other personal information deemed necessary for the creation of the customer account – email address, phone number(s), physical address – could be used to retrieve passwords instead.

We note that many other online entities that use online accounts in both the public and private sectors offer individuals ways to both sign into their accounts or reset their passwords using the same personal information that was necessary to set up the account – less sensitive information than an individual’s driver’s licence, passport or health card number, such as email address, first and last name, address or phone number. If an individual forgets a password, many online accounts also provide a “Forgot Password?” link which, when clicked, would require an individual to provide the email address used to set up the account, maybe a username or phone number associated with the account, and so on. Then the entity emails or texts a link to the email address or mobile phone number on the account, and the individual may click on the link to create a new password.

The collection of sensitive personal information and/or personal health information such as a driver’s licence number, passport number, or PHIN for the purpose of enabling people to access their account or to receive a link to change their password is not reasonably necessary and therefore contravenes FIPPA and PHIA.

Verification of identity of licence or permit holders in the field.

The department's second stated purpose for the collection of "Identification" for a customer account with the elicencing system is for enforcement purposes, specifically the verification of identity of licence or permit holders in the field. However, our office determined that the creation of and/or signing into a customer account occurs before, and is distinct from, the purchase of a licence or permit. Therefore, the collection of personal and/or personal health information for the purpose of *verification of identity of licence or permit holder in the field* is not necessary at the point of customer account creation. The department explained to our office that it initiated a Privacy Impact Assessment prior to the launch of the elicencing system but has not completed the assessment to date. The department should determine through the completion of its assessment if the collection of "Identification" for the purchase of specific licences and permits may be necessary for enforcement purposes and verification of identity of licence or permit holders in the field.

Limit on collection

Our office notes that there may also be other issues regarding the collection of personal information at the point of purchasing licences and permits not contemplated in this report as we did not investigate the collection of specific personal information for each individual licence and permit available. We note that subsection 36(2) of FIPPA limits the collection of personal information to only that which is necessary:

Limit on amount of information collected

36(2) A public body shall collect only as much personal information about an individual as is reasonably necessary to accomplish the purpose for which it is collected.

The various licences and permits available for purchase through the elicencing system have widely differing personal information collection needs.

Our office recommends that the department complete the Privacy Impact Assessment (PIA) to ensure that the collection of all elements of personal information at both the customer account stage and purchase of licences and/or permits stage is limited to only that which is reasonably necessary for each specific licence or permit. A PIA in this case should examine all the personal information elements to be collected for the purchase of each licence and permit to ensure that the information collected for each is reasonably necessary and limited. In this case, it is noted that the collection of personal information for varying purposes – customer account and purchasing different licences and/or permits – will necessarily have very different collection limits. The PIA would reveal the differing personal information needs of each licence and permit as well.

Our office also notes that the Privacy Impact Assessment should consider that personal information collected at the time of purchase for the purpose of verification of identity in the field would necessitate either that enforcement officers have access in the field to the personal information collected from individual licence holders, or the printed licences themselves contain the collected information. For example, height, eye colour, hair colour and so on might be reasonably necessary personal information elements to collect at the time of licence or permit purchase if an enforcement officer in the field subsequently has access to this information for the purpose of identity verification.

However, personal information such as a passport *number* collected at the time of purchase of a licence might not be useful to an enforcement officer in the field as the *number* does not provide any physical description of the hunter nor would a hunter be likely to carry their passport in the field.

3. Is proper notice provided to individuals at the time of collection?

Subsection 37(2) of FIPPA requires that when a public body collects personal information from an individual, the individual must be informed:

Individual must be informed

37(2) A public body that collects personal information directly from the individual the information is about shall inform the individual of

- (a) the purpose for which the information is collected;*
- (b) the legal authority for the collection; and*
- (c) the title and contact information of an officer or employee of the public body who can answer the individual's questions about the collection.*

This information is commonly provided to the individual by means of a collection notice or privacy statement or policy.

Our office notes that on the Manitoba Conservation⁶ elicencing home page, there is a heading at the bottom of the page titled “Legal,” under which is an option called “Privacy Policy.” The privacy policy link redirects you to the Manitoba government general privacy policy. It states the following:

In some other instances, it may be necessary for us to collect additional personal information in order to provide you with the service that you want. When personal information other than your name and mailing address is collected, you will be notified of

- the purpose for which the information is being collected*
- the legal authority for the collection*
- the title and business address (including email address) of an official who will answer any questions you may have about the collection of the information*

The department’s elicencing home page also includes some “Quick Links” near the “Legal” section, including a link titled “Frequently Asked Questions.” When clicked, this section offers many subheadings, and in the section on “Customer Account – First Time Customer,” the following question and answer is included:

Why do I need to provide personal information to purchase a licence or permit?

Personal information is collected on behalf of the Department of Conservation and Climate and Agriculture and Resource Development for the purposes of issuing receipts, licences and permits, conducting resource based surveys and law enforcement. Under the terms of the Information Management Agreement (IMA), Aspira has put in place security safeguards and measures to protect the personal information it collects from risk of unauthorized access, use, disclosure, alteration or retention.

⁶ In January 2023, the department name changed to Manitoba Natural Resources and Northern Development.

Manitoba Conservation and Climate takes the protection of individuals' personal information very seriously. The protection of personal information in the elicencing system is compliant with The Freedom of Information and Protection of Privacy Act (FIPPA). A comprehensive IMA with Aspira forms a key part of the service provider contract to ensure that personal information of applicants is securely stored and managed in Canada.

Our office also notes that on the “Create an Account” webpage, where an individual enters personal information to create an elicencing account, there is a collection notice at the bottom of the page that reads:

Manitoba elicencing Privacy Statement

In order to create an account to purchase a permit on the elicencing system, providing some of your personal information is required. Your personal information and personal health information is collected under the authority of The Wildlife Act (C.C.S.M. c. W130), The Fisheries Act (C.C.S.M. c. F90), The Provincial Parks Act (C.C.S.M. c P20), The Freedom of Information and Protection of Privacy Act (C.C.S.M. c. F175), (FIPPA) and The Personal Health Information Act (C.C.S.M. c. P33.5) (PHIA) and associated regulations. Your personal information and personal health information is collected only for the purpose of issuing receipts, licensing and permits, conducting resource based surveys and for enforcement purposes. If you have any questions, please contact Manitoba Conservation and Climate's Access and Privacy Officer at 200 Saulteaux Crescent, Winnipeg, MB R3J 3W3, or email ccfippa@gov.mb.ca.

We recommend that the privacy statement be updated to be both accurate, comprehensible, and informative as collection of personal health information for the purposes of both the customer account as well as purchase of licences and permits is not compliant with PHIA. We also suggest that the department make it clear that personal information is collected for two distinct purposes at two distinct stages: first, the creation of a customer account necessitates the collection of certain personal information; second, the purchase of specific licences and permits requires the collection of different additional personal information. This may best be done with two or more distinct privacy statements. The privacy statement(s) should be written in plain language to ensure that visitors to the elicencing site can understand the purposes for the collection, use and any disclosures of their personal information. The privacy statement(s) should also include notice that personal information collected via the elicencing system is stored in Canada, and is not shared or sold to third parties. Further, we note also that while including the telephone number of a department representative in a privacy statement is not a requirement of FIPPA or PHIA, it is recognized as a best practice to assist individuals who may have questions about the collection of their personal information.

OTHER ISSUES

Storage and Protection of Personal and Personal Health Information

Our office heard concerns from the public about the storage of personal information within the elicencing system as it appeared that the third-party vendor managing the elicencing system, Aspira, is based in – and may therefore store the collected information in – the United States. Neither FIPPA or PHIA explicitly prohibit the storage of personal or personal health information outside of Canada, but

public bodies must still take reasonable steps to ensure that personal information is protected, which could include considering the implications of transferring and/or storing information in another jurisdiction. Subsection 44.1(3) of FIPPA also requires public bodies to enter into a written agreement with an information manager to ensure the personal and personal health information is protected by the information manager.

The department indicated that the Manitoba government entered into an agreement with vendor, RA Outdoors (Aspira), after a tendering process to modernize the department's licensing program to deliver various wildlife, fisheries and other licences through an online, Internet-based service. The agreement included an Information Manager Agreement that identifies RA Outdoors as the Information Manager, and sets out its obligations for the protection of Manitoba data, including personal and/or personal health information. RA Outdoors' elicencing system collects personal and personal health information from individuals on behalf of the department for various purposes including online customer account set up and maintenance, and issuing receipts, licences, and permits. RA Outdoors also conducts surveys on behalf of the department, and maintains personal and personal health information to support the department's administration of the laws under which the permits and licences are issued.

The department explained to our office that the Government of Manitoba has entered into an Information Manager Agreement with RA Outdoors (Aspira), and one part of the contractual obligations with Aspira is that information is required to be stored on servers located in Canada. RA Outdoors (Aspira) is also obligated to put in place security safeguards and measures to protect the personal information it collects from the risk of unauthorized access, use, disclosure, alteration or retention.

Our office also heard concerns from the public regarding the possible disclosure of individuals' personal information by Aspira to third parties, as the privacy policy on the Aspira website states: "We may share your information, including personally identifiable information, with non-affiliated and affiliated third parties." The department explained to our office, however, that the Information Manager Agreement clearly defines Manitoba's ownership and use of the information collected through the elicencing system. Further, the department clarified that no information is sold or shared out of the system under any circumstances with a third party. The department also indicated that under the terms of the contract, Manitoba is the exclusive owner, and has custody and control of all personal information and personal health information that is collected by RA Outdoors under the agreement.

Our office reviewed the Information Manager Agreement between the Government of Manitoba and RA Outdoors to confirm its stated position. We found that the agreement placed requirements on Aspira to ensure the storage of personal and personal health information in Canada; to implement security safeguards to protect personal and personal health information from unauthorized access, use, disclosure, and retention; and to prohibit the sale or unauthorized sharing of personal information.

Given the concerns expressed by members of the public about the storage and protection of their personal information, we suggest that the department clearly state on the elicencing website that personal information collected via the elicencing system remains in the custody and control of the department, is stored in Canada, and is not shared or sold to third parties.

FINDINGS AND RECOMMENDATIONS

Our investigation has found that the department is not authorized to collect certain personal and personal health information for the purpose of setting up a customer account in the elicensing system. We also found that the collection of personal health information for the purposes of both the customer account as well as purchase of licences and permits is not compliant with PHIA. FIPPA sets out that personal information may only be collected for specific authorized purposes, and collection must be limited to only as much personal information about an individual as is reasonably necessary to accomplish the purpose for which it is collected.

We also found that while the department initiated a Privacy Impact Assessment (PIA), it was not completed prior to implementing the elicensing system and the department has not established what information is necessary to set up a customer account or what information is necessary for the distinct and separate action of purchasing different licences or permits. A PIA is most useful when undertaken prior to the introduction of new programs, services, and technological innovations. In this case, a PIA would have revealed all the personal information elements to be collected for the customer account creation, as well as for each licence and permit purchase, enabling the department to satisfy itself that it was only collecting the necessary information for each authorized purpose.

Therefore, our office is making the below recommendations:

Recommendations

1. We recommend that the department cease collecting personal health information for the purpose of creating an account on its elicensing system. We also recommend that the department destroy all personal health information that has been collected to date.
2. We recommend that the department complete its Privacy Impact Assessment of the elicensing system to determine what personal information may be necessary to collect for the distinct and separate purposes of customer account creation, and the purchase of each type of individual permits and licences.
3. We recommend that the department's elicensing system limit the collection of personal information, including "identification," for the purpose of setting up a customer account to only the personal information necessary for that purpose.
4. Our office recommends that the department clearly state on the elicensing website that personal information collected via the elicensing system is stored in Canada, and is not shared or sold to third parties.
5. We recommend that the privacy statement be updated so that it is clear that personal information is collected for the purpose of creating a customer account, as well as for the purpose of issuing receipts, licences and permits. We would encourage the department to also consider including the telephone number of a department representative in the privacy statement.

CONCLUSION

Through our investigation, our office found that the department of Conservation and Climate's⁷ eliciting system is not in compliance with FIPPA and PHIA, and we have made five recommendations as above.

We also emphasize that under the Freedom of Information and Protection of Privacy Act and the Personal Health Information Act, public bodies and trustees have specific privacy obligations, including how to collect, use and disclose the public's personal and personal health information. Protecting privacy is more than just upholding the law. It also involves taking a proactive approach to ensure that a public body limits collection and safeguards the public's personal information. Risks to privacy can arise in many circumstances, including collecting excessive and unnecessary personal information.

We recommend that the department complete its Privacy Impact Assessment (PIA) as this will assist it in limiting the collection of and safeguarding Manitobans' personal information. While our investigation focused on the creation of the account, we recommend that the department's PIA should also clearly determine what personal information is necessary for purchase of *each of the available permits and licences* to ensure that the collection of personal information is limited to only that which is necessary and authorized under FIPPA.

The Manitoba Ombudsman has developed a Privacy Impact Assessment tool that encourages public bodies to think about privacy before introducing or evaluating an existing program, service, activity or technological innovation. In our digital age, in employing technology, governments are constantly striving to provide and administer programs and services in the most effective and efficient ways. With greater technological advancement, opportunities for the collection, transmission, storage and management of data by third party managers are viable options, but only if government has its own established structures to make sound determinations that the privacy impact of new technology has been considered and steps have been taken to protect the personal and personal health information of citizens. A strong privacy culture is the foundation for using new technology. Without significant commitment to ensuring that advanced knowledge of privacy principles is embedded within the organizational culture and any new technological services, breaches of privacy are more likely to occur.

Manitoba Ombudsman

March 31, 2023

⁷ In January 2023, the department name changed to Manitoba Natural Resources and Northern Development.

Summary of the Recommendations and Department Responses

In light of the investigation findings, Manitoba Ombudsman made five recommendations to Manitoba Conservation and Climate⁸. The following incorporates the department's responses to our recommendations:

1. We recommend that the department cease collecting personal health information for the purpose of creating an account on its elicencing system. We also recommend that the department destroy all personal health information that has been collected to date.

Department's response: ECP [Manitoba Environment, Climate and Parks⁹] worked with the vendor to remove the Personal Health Information Number as an identifier for the customer when setting up an account. The department also worked with the vendor to destroy all personal health information collected to date.

2. We recommend that the department complete its Privacy Impact Assessment of the elicencing system to determine what personal information may be necessary to collect for the distinct and separate purposes of customer account creation, and the purchase of each type of individual permits and licences.

Department's response: ECP [Manitoba Environment, Climate and Parks] and Information and Privacy Policy Secretariat (IPPS) are currently working on Module 1 of the Privacy Impact Analysis (PIA) for a Park Vehicle Permit. It is anticipated that this PIA will be completed by April 2023. Please note that upon completion of the Park Vehicle Permit PIA, additional PIAs will need to be completed for each license/permit sold through the system, although those are not expected to take as long, as the aspect of acquiring an account for the system is being addressed in the first PIA for the Park Vehicle Permit. The department will strive to complete all PIAs by October 2023. As each PIA is finalized, any recommended changes will be reviewed between the department and the vendor and an implementation plan developed.

3. We recommend that the department's elicencing system limit the collection of personal information, including "identification," for the purpose of setting up a customer account to only the personal information necessary for that purpose.

Department's response: ECP [Manitoba Environment, Climate and Parks] will work with the vendor to review the information necessary to create a customer profile, including identification for the purchase of each individual licence and permit and will work with the vendor to implement any recommended changes. This will be done in concert with the outcomes of the PIA work in recommendation two. For recommended changes that are feasible in the system architecture, an implementation schedule will be developed. For any recommended changes that require large change to the system architecture, those items will be considered at the next contract renewal period which is March 31, 2025.

4. Our office recommends that the department clearly state on the elicencing website that personal

⁸ In January 2023, the department name changed to Manitoba Natural Resources and Northern Development.

⁹ In January 2023, the department name changed to Manitoba Natural Resources and Northern Development.

information collected via the elicencing system is stored in Canada, and is not shared or sold to third parties.

Department's response: A new three-paragraph privacy statement has been prepared, which includes all of the suggestions provided from your office. The statement has been reviewed by Civil Legal Services, and the revised statement has been posted live on the website as of June 22, 2022.

Please note references to personal health information remain in the new privacy statement now online as some personal health information related to eye colour and hair colour is collected specifically for hunting and angling licences to aid conservation officers in enforcement activities.

5. We recommend that the privacy statement be updated so that it is clear that personal information is collected for the purpose of creating a customer account, as well as for the purpose of issuing receipts, licences and permits. We would encourage the department to also consider including the telephone number of a department representative in the privacy statement.

Department's response: A new three-paragraph privacy statement has been prepared, which includes all of the suggestions provided from your office. The statement has been reviewed by Civil Legal Services, and the revised statement has been posted live on the website as of June 22, 2022.

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