

FOR INTERNAL USE ONLY
NOT FOR PUBLIC DISTRIBUTION

INSURANCE BROKERS ASSOCIATION OF CANADA

**BROKER GUIDE FOR THE USE OF *THE PERSONAL*
INFORMATION PROTECTION AND ELECTRONIC
DOCUMENTS ACT (PIPEDA) COMPLIANCE TOOLS**

NOVEMBER 2002



Your Best Insurance
Is An Insurance Broker

DISCLAIMER

The following document explains in general terms how insurance brokers should use the various tools created by IBAC to assist in compliance with the “Personal Information Protection and Electronic Documents Act” (PIPEDA). This document is neither intended for public distribution, nor to provide specific legal advice. While great care was taken to ensure the accuracy of its contents, you should seek and be guided by legal advice based on your specific circumstances.

TABLE OF CONTENTS

Introduction.....	1
Primary Tool: The Personal Information Policy and Procedure Handbook.....	3
Supporting Tool #1: Personal Information Consent Form.....	4
Supporting Tool #2: Personal Information Request/Complaint Form.....	8
Supplementary Tool A: Personal Information Oral Consent Acknowledgement Form.....	9
Supplementary Tool B: Privacy Brochure.....	12
Supplementary Tool C: Personal Information Commercial Client Agreement.....	14
Supplementary Tool D: Personal Information Model Addendum To Broker/Insurer Contracts.....	15

INTRODUCTION

This document explains the various tools created by the Insurance Brokers Association of Canada (IBAC) to assist brokers meet their legal obligations vis-à-vis their clients under the *Personal Information Protection and Electronic Documents Act* (PIPEDA).

You are encouraged to familiarize yourself with these tools as their proper use should enable you to meet or exceed the requirements of the legislation.

Please note that the use of these tools, although recommended, is completely optional. IBAC will not exercise any oversight role concerning their use.

When to begin using these tools:

- **On January 1, 2004, the PIPEDA will apply to all insurance brokerages** not otherwise subject to “substantially similar” provincial legislation. **Those who wish to take measures to comply with the PIPEDA before that date will be doing so voluntarily, and not as a result of any legal requirement to do so.**
- These compliance tools are being provided in advance of that date to give you a sufficient amount of time to familiarize yourself with them, train your staff as appropriate and implement any other changes to your business operations you may deem to be necessary to comply with the PIPEDA.
- Other factors you may wish to consider when deciding whether to comply with the legislation before 2004 include:
 - banks may use their early compliance as a competitive marketing tool for their insurance operations;
 - you may have difficulty obtaining information from businesses that became subject to the PIPEDA in 2001 unless you can assure them of a comparable level of protection for personal information;
 - consumer pressures; and
 - pressures from P&C insurers and brokers themselves.

Before you use any of these tools:

- Make sure to:
 - **Read and understand them**, as you will likely have to explain them to clients.
 - **Appoint a Privacy Officer** who is accountable for your organization's policies and practices. This is a requirement under the PIPEDA.

For additional information on the PIPEDA's obligations and their applicability to your brokerage, please consult the document entitled "*The Personal Information Protection and Electronic Documents Act: A Guide for Insurance Brokers*" and the supporting document of "Frequently Asked Question" (FAQs). Both were prepared by IBAC, and are available from your provincial or regional insurance broker association.

A copy of the PIPEDA and related information may be obtained from the website of the Privacy Commissioner of Canada at www.privcom.gc.ca. You may also contact that organization by telephone at 1-800-282-1376.

PRIMARY TOOL:

**THE PERSONAL INFORMATION POLICY AND PROCEDURE
HANDBOOK**

The handbook was created because **the PIPEDA requires organizations to develop documents and other media to explain their policies and procedures** to their stakeholder communities including customers and other members of the public.

While **the legislation** does not require all detailed policies and procedures to actively be made public, it **requires that the following minimum information be made public:**

- *The name or title and contact particulars of the organization's "Privacy Officer;"*
- *The means by which access to information can be obtained;*
- *A description of the types of information held by the organization and a general description of its uses; and*
- *A description of information that is disclosed to related organizations.*

The handbook exceeds these minimum requirements. It can be used as your brokerage's privacy policy, and is suitable for public distribution at your discretion, with or without its two supporting tools (the Personal Information Consent Form and the Personal Information Request/Complaint Form).

This document also explains how to use the following four supplementary tools which are not specifically mentioned in the Handbook:

- A: Personal Information Oral Consent Acknowledgement Form**
- B: Privacy Brochure**
- C: Personal Information Commercial Client Agreement**
- D: Personal Information Model Addendum To Broker/Insurer Contracts**

SUPPORTING TOOL #1:

PERSONAL INFORMATION CONSENT FORM

What is it?

- This form is a **tool for obtaining the express, written consent of individuals** for the collection, use and disclosure of **their personal information**. Express, written consent is one of the ways brokers can obtain client consent for the collection, use or disclosure of their personal information. The other types of consent brokers may rely on are express oral consent, and implied consent.
- This form can be used by brokers who provide traditional P&C services exclusively, as well as by those who also provide financial or other products (see Section below “When to use the form”).

The Personal Information Consent Form is NOT:

- Suitable for most commercial insurance policies other than those where it is desirable and practical to obtain signed consents from every individual covered under an insurance policy.
- Your brokerage’s privacy policy.
- A replacement for any standard insurance application form. It is a supplementary tool.
- Mandatory for brokers to use.

Why use express written consent?

- The PIPEDA requires that the consent of the individual be obtained for the collection, use or disclosure of their personal information. While it can be obtained in a variety of ways, **express, written consent is the “highest” and safest form of consent.**
- **Obtaining express written consent in this manner will most effectively protect brokers against possible future allegations by clients** that their consent was never obtained to collect, use or disclose their personal information.

When to use the form?

It is difficult to anticipate all the situations a broker may face with respect to the collection, use and disclosure of client personal information. Similarly, the level of risk a broker is willing to assume in handling clients' personal information will vary with the individual and the circumstances. Nevertheless, the following provides **general guidance concerning the circumstances under which it is advisable for the broker to obtain the express, written consent of a client.**

- **It is particularly recommended that you use this form when:**
 - **Sensitive information is collected, used or disclosed** from a new or existing client. The PIPEDA states that “an organization should generally seek express consent when the information is likely to be considered sensitive.” However, it does not define the meaning of “sensitive” beyond the following statement “although some information (for example, medical records, income records) is almost always considered sensitive, any information can be sensitive, depending on the context.”
 - You intend to **cross-sell your brokerage's other non-P&C services, including but not limited to, financial services (see below), real estate, travel, life and health, to a new or existing client** in the present or future. In the case of an existing client, the form should be used because cross-selling entails the use of existing information for a new purpose which requires a new consent under the law.
 - Your **new or existing client wishes to obtain wealth management services from you** in addition to those relating to risk-management. A signed consent is recommended in those situations because wealth management is likely to involve particularly sensitive information. Moreover, in the case of an existing client, the provision of wealth management services entails the use of existing information for a new purpose.
 - **The client has provided express written consent in the past, but wishes to change the terms of consent.** For example, the client wishes to withdraw consent for his personal information to be used for the purpose of cross-selling your brokerage's other services.
- **It is also advisable to use the form under the following circumstances:**
 - **At the outset of a new business relationship** because the legislation states “an organization will seek consent for the use or disclosure of the information at the time of collection.” Doing so is particularly important for brokers whose lines of business services extend beyond the bounds of traditional P&C products and services.
 - **When a client renews** his insurance product with your brokerage under the same terms and conditions as in the past (i.e. same insurer), **but has never provided any form of express consent to the collection, use or disclosure of his personal information.**

- **When a client wishes to renew his insurance product with your brokerage, but you intend to disclose his personal information to new insurers in the process.**

When it is not necessary to use the form?

- Express written consent does not need to be obtained when:
 - **You are renewing a policy at the client's request, and he does not express a wish to change the terms of a previous consent.** In this case, it is reasonable to assume that there is an implied consent for the handling of his personal information already on file.
 - **Fraud is suspected.** Such situations do not require any form of consent.
 - **Information is collected in a generic way for the purpose of giving a quote** (e.g. the prospective client gives you his/her age, indicates gender, shares driving record etc.) **but is not retained.** This applies whether or not the client gives you his or her name. In this case, it is reasonable to assume that there is an implied consent for the handling of the client's personal information.

Who should sign the form?

- When used, this form **must be signed by the brokerage and every individual covered by the particular policy.** Generally speaking, only individuals themselves may sign consents relative to their own information unless there is a valid legal authority for someone else to sign, such as a Power of Attorney, parental authority, etc.

What if a client is requested to sign the form, but does not do so?

- If a client is provided with the form but does not acknowledge it (e.g., does not sign and return the form which was sent by fax or mail), **depending on the circumstances, you may assume that there is implied consent** for the collection, use or disclosure of their personal information. However, where sensitive information and/or cross-marketing is involved and consent cannot be reasonably implied by the circumstances, it is particularly advisable that you follow-up on the matter and seek to obtain the written consent.
- **If a client expressly refuses to sign the form, you should explore the reasons for the refusal,** and explain its implications including your inability to provide service lawfully. If consent still cannot be obtained, you should consider terminating the business relationship or seeking legal assistance.

What if a client signs the form, but checks off certain boxes (i.e., refuses to consent to specific collection, use or disclosure of personal information)?

- **If a client refuses to agree to *parts* of the form, again, you should explore the reasons for the refusal**, and explain its implications including your possible inability to provide service. **However, you need to carefully review what the client is objecting to — not all refusals will prevent the issuance of an insurance policy.** For example, if the client refuses to allow you to *collect basic information*, or to allow you to use personal information to *protect against inaccuracy*, you will likely have to refuse to provide service. However, if the client checks off the box in paragraph 3 of the form, which would otherwise allow you to cross-market financial services, you need not refuse service; you simply must refrain from using this client's information to cross-market. If you are still unsure how to proceed, you should consider seeking legal assistance.

For additional information

- See Policies 2, 3, 4, and 8 of the Handbook.

SUPPORTING TOOL #2:

PERSONAL INFORMATION REQUEST/COMPLAINT FORM

What is it?

- A form to be completed by a client who wishes to:
 - Be provided access to their personal information held by the broker.
 - File a complaint against the broker's handling of their personal information.

Why use it?

- **The legislation specifies that, upon request, an individual will be informed of the existence, use and disclosure of his or her personal information, and will be given access to it. That individual must also be given the opportunity to challenge the accuracy and completeness of that information and have it amended as appropriate.**
- This form assists in meeting your obligations toward clients in this respect.

For additional information

- See Policies 9 and 10 of the Handbook.

SUPPLEMENTARY TOOL A:

**PERSONAL INFORMATION ORAL CONSENT ACKNOWLEDGEMENT
FORM**

What is it?

- This form is an **internal tool** for recording the **express, oral** consent of **individuals** for the collection, use and disclosure of **their own personal information**. Express, oral consent is **one of the ways** brokers can obtain client consent for the collection, use or disclosure of their personal information. The other types of consent brokers may rely on are express written consent, and implied consent.
- It is primarily intended to assist brokers **dealing with clients over the telephone** (or in other situations where obtaining a signature would not be practical), and from whom they would like to obtain consent.
- It can be used by brokers who provide traditional P&C services exclusively, as well as by those who also provide other financial products (see Section below “When to use the form”).

The Personal Information Consent Form is NOT:

- Intended to be signed or presented to the client for consideration. It is strictly an **internal form** to assist brokers obtain client consent.
- Intended to fulfill any of the PIPEDA’s obligations concerning “openness” or information that must be made publicly available.

Why use express oral consent?

- The legislation allows for consent to be given orally for the collection, use or disclosure of a client’s own personal information.
- As brokers conduct considerable business over the telephone, **it may often be more practical to obtain the client consent by way of agreement with a statement that is read to them, rather than by obtaining their signature on a form.**
- The legislation provides little guidance concerning the type of consent that should be obtained under particular circumstances. While express *written* is considered the best form of consent because it is the easiest to prove in the event of a dispute, express *oral* is equally acceptable and may be more practical to obtain in some circumstances. However, brokers

should be cautious in using this form instead of a signed consent form, because they will have less protection against allegations by clients that their consent was never obtained for the collection, use or disclosure of their personal information.

When to use the form?

It is difficult to anticipate all the situations a broker may face with respect to the collection, use and disclosure of client personal information. Similarly, the level of risk a broker is willing to assume in the process handling of client personal information will vary with the individual and the circumstances.

- Nevertheless, the circumstances under which brokers should obtain the express oral consent of a client are largely the same as those relating to express, written consent — except that a signed Personal Information Consent Form will provide brokers with better protection against related client complaints.
- For additional information, please see section of same name under “Supporting Tool #1: Personal Information Consent Form.”

When is it not necessary to use the form?

- See section of same name under “Supporting Tool #1: Personal Information Consent.”

How to use the form?

- The boxed segments at the top of the form should be completed by the broker.
- **Items 1 through 5 under A) should be read to the client whose consent is sought relative to their own personal information.** Unless there is valid legal authority for someone else to sign (e.g. Power of Attorney, parental authority etc.), the legislation does not allow an individual to provide consent for another.
- **A check-mark should be placed by the “Yes” option if the client has positively, and unconditionally, consented** to the collection, use and disclosure of his/her personal information as per the statement read by the broker.
- **A check-mark should be placed by the “No” option if the client has completely or partially refused to provide consent** to the collection, use and disclosure of his/her personal information as per the statement read by the broker. Section B of the form should then be completed as appropriate.
- The completed form should be placed in the client’s file.

What if a client places conditions on the specific collection, use or disclosure of personal information (i.e. “B” section of the form has been completed by the broker)?

- **If a client refuses to agree to parts of the read statement, you should explore the reasons for the refusal, and explain its implications including your possible inability to provide service. However, you need to carefully review what the client is objecting to — not all refusals will prevent the issuance of an insurance policy.**

What if a client refuses to provide consent of any kind?

- **If a client expressly refuses to provide consent for the collection, use and disclosure of his/her personal information, again, you should explore the reasons for the refusal, and explain its implications including your inability to provide service lawfully.**

For additional information

See Policies 2, 3, and 8 of the Handbook.

SUPPLEMENTARY TOOL B:

PRIVACY BROCHURE

What is it?

- **A general information privacy brochure suitable for wide distribution to brokers' personal lines clients.** (This brochure is not tailored for the commercial context where privacy considerations are different because there is either no personal information involved, or the individuals in question are not dealt with directly.)
- This brochure provides a summary of typical broker practices concerning the collection, use and disclosure of client personal information.

Who can use it?

- The brochure is suitable for distribution by brokers who provide traditional P&C services exclusively, as well as by those who also provide financial or other services. It is also suitable for express and/or implied consent practices.

Why use it?

- **The legislation requires that businesses make some information about their policies and procedures publicly available.** This brochure will assist you in meeting your obligations in this area.
- This brochure was designed in a very generic way to allow use by virtually any type of brokerage. However, because of its very general nature, **use of this brochure alone is not likely to be sufficient to ensure compliance with the PIPEDA.**

How to use the brochure?

- Specific printing instructions are provided in an attached document.
- The name of your brokerage and your Privacy Officer should be inserted in the designated space in the brochure before distribution.
- **This brochure should be used in conjunction with the other PIPEDA compliance tools mentioned in this document, and particularly the Personal Information Policy and Procedure**

Handbook which provides additional information concerning the handling of client personal information (and which can also be distributed to the public).

For additional information

- See Policies 1 and 8 of the Handbook, and to a lesser extent the other Handbook policies.

SUPPLEMENTARY TOOL C:

PERSONAL INFORMATION COMMERCIAL CLIENT AGREEMENT

What is it?

- This form is most likely to be of use for **large commercial policies**.
- This form is suitable in situations where a **broker cannot or does not want to obtain signed consents from every individual who may be covered under a policy** (i.e. did not use the Personal Information Consent Form) such as in the case of multiple insured parties.

Why use it?

- In the event of a complaint to the Privacy Commissioner about a broker, use of this form **will provide evidence that**:
 - **The broker obtained written assurances that the client who sent him or her the personal information of other individuals had the authority to obtain it.**
 - **The client agreed to respect the general rule in the PIPEDA that personal information is to be used in a reasonable manner.** This point respects the accountability requirement under Principle 1 in the PIPEDA.

Other considerations

- This agreement imposes an obligation on brokers and clients to use personal information in a reasonable manner.
- Ensure that you can fulfil your obligations under the PIPEDA before obtaining assurances that your client is also doing so.

For additional information

- See Policy 1 of the Handbook.

**SUPPLEMENTARY TOOL D:
PERSONAL INFORMATION MODEL ADDENDUM TO
BROKER/INSURER CONTRACTS**

What is it?

- **A model addendum** to broker/insurer contracts to address legislative requirements in the area of privacy. Use of this addendum **may be suggested to insurers for inclusion in or addition to the standard broker/insurer contract.**

Why use it?

- Most contracts between brokers and insurers do not currently address either party's legal obligations concerning the protection of client personal information.
- **Brokers are responsible for the personal information transferred to insurers** (or any third party) for processing.
- **Brokers secure reasonable assurances that the insurer (or other party) receiving the information is complying with the Act.** They must use contractual or other means to secure a comparable level of protection while the information is being processed by the insurer (or other third party). This addendum is an example of such contractual means.

Other considerations

- Given the staggered dates of PIPEDA implementation, parties may not wish to be bound to obligations which exceed their legal duties at a given time.
- Ensure that you can fulfil your obligations under the PIPEDA before obtaining assurances from the insurer (or other third party) that it is doing so.

For additional information

- See Policy 1 of the Handbook.