

## FREQUENTLY ASKED QUESTIONS

### Accessing Records of Another Person 12 years of Age or Older and Informed Consent

#### *Under the Freedom of Information and Protection of Privacy Act*

1. What does informed consent mean and why is it required?

The *Freedom of Information and Protection of Privacy Act* ([FOIPPA](#)) [Policy and Procedures Manual](#), in the context of Sections 32, 33 and 33.1 (1)(b), deals with consent to the use and disclosure of personal information. The concept of “informed consent” involves ensuring that a person who authorizes the release of their personal information fully understands the nature of the personal information to be disclosed. Informed consent is required so Information Access Operations (IAO) can determine if the above conditions have been met. IAO’s Authorization for Release of Records form describes in detail the types of personal records held by the Ministry enabling individuals to indicate specifically which personal records the Ministry is authorized to disclose.

FOIPP Policy Interpretation:

1. A public body must ensure that personal information in its custody or under its control is disclosed only as permitted under section 33.1, 33.2 or 33.3.
2. Section 33.1(1)(b) provides that a public body may disclose personal information if the individual whose information is being requested consents to the disclosure.
3. Any consent by an individual must be an informed consent, which must include informing the individual of:
  - the exact nature and extent of personal information held by the public body about the individual; and
  - the proposed disclosure of the personal information.
4. The absence of consent shall be interpreted as the absence of authorization. Where the person concerned has not consented to a disclosure of the personal information, public bodies cannot assume consent to the disclosure.

2. What other options are available?

- A court order for production of records held by the Ministry can be sought.

3. Are there other requirements for a consent to be considered valid under FOIPPA?

Where an individual is seeking a third party adult's personal information and is relying on a consent form for that purpose, section 11 of the FOIPPA Regulation applies with respect to the adequacy of the consent form itself.

**FOIPPA Regulation 11:**

(1) For the purposes of section 26 (d), 30.1 (a), 32 (b) and 33.1 (1) (b) of the Act, consent must

- (a) be in writing
- (b) be done in a manner that specifies
  - (i) the personal information for which the individual is providing consent, and
  - (ii) the date on which the consent is effective and, if applicable, the date on which the consent expires.

A consent must also:

1. Clearly identify the individual providing the consent (full name and date of birth).
2. Be signed by the individual and be dated within the last 6 months.
3. State the jurisdiction (provincially or internationally) to which the personal information will be disclosed (if applicable).