
Privacy Matters

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If you're a condominium owner, you already know the benefits of your lifestyle choice. But chances are you may have a few questions about your rights and obligations under the *Personal Information Protection Act* ("PIPA"), which applies to strata corporations. In this article, the Office of the Information and Privacy Commissioner for British Columbia answers some of the most common questions about PIPA from condominium owners.

1. What is PIPA?

Simply stated, PIPA is an Act about privacy in the private sector. It describes how all private sector organizations must handle the personal information of individuals and employees and creates common sense rules about collecting, using and disclosing that personal information. PIPA was designed to balance the following two principles:

- An individual's right to protect his or her personal information; and
- An organization's need to collect, use or disclose personal information for reasonable purposes

2. Why are strata corporations subject to PIPA?

In British Columbia, strata corporations and strata agents acting on their behalf must follow the privacy rules contained in PIPA because they're considered "organizations" under PIPA.

3. What constitutes "personal information" under PIPA?

PIPA defines personal information as information about an "identifiable individual." It includes things like name, age, weight, height, home address, home phone number, race, ethnic origin, sexual orientation, medical information, marital status, religion, finances, education

and employment, as well as factual accounts or opinions about that individual. Some of the common types of personal information that strata corporations may manage include:

- Name, address and phone number
- Banking or credit card information
- Emergency contact information
- Owner/tenant's insurance particulars
- Names of family member living with an owner or occupying the strata lot
- Debts owed to the strata corporation by an owner
- Vehicle license numbers

4. What's the difference between "express consent" and "implied consent?"

PIPA is a consent-based law, which means that its collection, use and disclosure provision requires the consent of the individual the information is about. In addition, the collection/use/disclosure must be reasonable in the circumstances. "Express consent" means that a person has specifically consented, either orally or in writing, to the strata corporation collecting, using or disclosing the personal information for specified purposes. For example, a strata corporation might obtain express consent from an owner or tenant to collect personal information so the strata corporation can automatically deduct monthly strata fees from a bank account.

"Implied consent" happens when, knowing the purpose for the collection of the personal information, a person voluntarily gives the information to the strata corporation. For example, owners or tenants who sign a volunteer sheet for yard clean-up have provided implied consent to be contacted by the strata corporation for

that purpose. It is not necessary for words of consent to be provided.

However, it is generally a good practice for strata councils to seek and obtain express consent from owners or tenants when collecting any personal information, as this enhances transparency and fosters trust.

5. Can a strata corporation provide an owner with the contact information for other owners?

Yes. Strata corporations are required to keep a list of the names and mailing addresses of strata lot owners and make the list available to other owners and other authorized individuals pursuant to ss. 35 and 36 of the *Strata Property Act* (“SPA”). This list does not include an owner’s phone number, email address or other contact information beyond mailing addresses if different from their strata unit. If a strata corporation wants to disclose additional contact information of owners, it must ensure that the disclosure is for a reasonable purpose and that the individual has consented to such a disclosure and for such a purpose.

6. Can a resident have access to a letter of complaint about them?

Under s. 36 of the SPA, strata councils must disclose records and documents to owners and other authorized individuals, including correspondence received by the strata corporation; PIPA also authorizes this disclosure pursuant to s. 18(1)(o). Since strata corporations are at liberty under SPA to disclose complaint letters to the person who is the subject matter of the complaint, they should have clear policies explaining to all owners and tenants that they will do so upon receiving a written request by an authorized individual.

7. Section 36 of SPA allows an owner to access a copy of the minutes of annual and special general meetings and council meetings. Do names and other personal information need to be removed before the minutes are released?

No. Section 36 of SPA states that upon receiving a request, the strata corporation must make records and documents available to owners and other authorized

individuals. Because the disclosure is expressly authorized by another law, the personal information in the minutes can therefore be disclosed pursuant to s. 18(1)(o) of PIPA. Since minutes may be shared with individuals not living in the strata corporation, such as realtors and prospective strata lot owners, it is important that the minimal amount of personal information is disclosed in the minutes. When drafting minutes, the best practice is to only record the personal information that is necessary for business or legal purposes.

8. If I send an email to a strata manager, and request that the email remain private, is the strata manager allowed to share it, including the personal information in it, with the strata council?

If the email contains strata-related information, it cannot remain private. The strata manager presumably is contracted to act on behalf of the strata council and strata corporation. Sections 35 and 36 of SPA specify that the strata must keep copies of correspondence that it receives. If an owner or strata council member requests access to those pieces of correspondence, they are entitled to view them and/or obtain copies.

9. Citing security concerns, my strata council wants to install a video surveillance system and implement a key fob system. I don’t really want to be videotaped or monitored 24/7. Is this permissible under PIPA?

While PIPA does not prohibit the use of surveillance by strata corporations these systems should only be used after less privacy-intrusive measures have failed to address a serious problem. Before installing or operating a video surveillance or access control system, the strata corporation should pass a by-law authorizing its operation. Or, at the very least, all owners should consent to its use. In all cases, a strata corporation should have a comprehensive written privacy policy in place that governs the use of such systems and the personal information they collect.

10. How long will my personal information be retained by the strata council?

Under PIPA, if the strata corporation uses an individual’s personal information to make a decision that directly affects the individual, it must keep that information for at least one year after the date of that

decision. PIPA requires that strata corporations destroy or safely dispose of information when it is no longer needed. Note that other laws, including the SPA, may also require the retention of information; if those laws require longer retention, then the longer retention period applies.

11. I believe my personal information was shared in an unauthorized way by my strata. How should I follow up?

PIPA allows individuals to make privacy complaints to the Office of the Information and Privacy Commissioner for British Columbia (OIPC). But before complaining to the OIPC, you should attempt to resolve your complaint directly with the strata. Submit your complaint in writing directly to the strata's privacy officer. Provide as much detail as you can in order to help them to understand the nature of your complaint. Give the strata at least 30 business days to respond. If after 30 business days you have not received a response from the strata, or if you are unsatisfied with how the strata addressed your complaint, you can make a complaint in writing to the OIPC.

INFO

The Office of the Information and Privacy Commissioner for British Columbia recently released an updated version of *Privacy Guidelines for Strata Corporations and Strata Agents*. The new guidelines clarify how personal information should be treated when strata corporations receive requests for correspondence related to a complaint. The document also includes information that will assist strata corporations with responding to privacy complaints and breaches, creating privacy policies, installing video and/or audio surveillance and more.

The new *Privacy Guidelines for Strata Corporations and Strata Agents* and a supplemental Q and A document can be downloaded at <https://www.oipc.bc.ca/tools-guidance/guidance-documents/>.

A Duty to Protect

Here's how strata managers and councils can help safeguard personal information from loss and other risks.

- Name a Privacy Officer for both the strata corporation and the property management corporation.
- Create and pass a privacy policy at an AGM or SGM.
- Ensure all personal information stored on a personal computer or other electronic storage device is encrypted.
- Lock filing cabinets and other areas where personal information is stored.
- Institute a "clean desk" policy in the strata manager's office or council meeting room. Lock all records containing personal information in a filing cabinet when they are not being used, as opposed to leaving them out on a desktop.
- Restrict access to files to authorized individuals only.
- Attach a wire cable and lock to a portable storage device, such as a laptop, to prevent someone walking off with it; store the device in a locked cabinet when not in use.
- Destroy or use a commercial wiping software program to completely erase hard drives or other memory storage devices before discarding.
- Always shred papers containing personal information.
- Develop and implement confidentiality policies for members of the strata council.
- Ensure that any third party hired to manage personal information on behalf of the strata corporation is aware of and bound by the corporations' privacy policy.
- Ensure that strata council members understand that the personal information they are privy to is only to be used for strata corporation business and that it is not to be shared with their neighbours and/or friends as gossip.