



Privacy Fact Sheet

Minors, Mentally Incapable and Deceased Individuals

Introduction

1. The purpose of this Privacy Fact Sheet is to explain the circumstances in which a third party may exercise privacy rights for a minor (an individual under 19 years of age); an adult who is temporarily or permanently incapable of exercising his or her own rights; or a deceased individual.
2. Privacy rights include the right to:
 - a. access one's personal information;
 - b. request a correction of the information; and
 - c. consent to the collection, use and disclosure of the information.
3. This Privacy Fact Sheet is intended to assist UBC staff and faculty members to understand their obligations under the *Freedom of Information and Protection of Privacy Act* (FIPPA). It is not intended to be a substitute for legal advice. If you have specific questions about FIPPA, contact the Office of the University Counsel.

Acting "for" an Individual

4. Third parties may only exercise privacy rights of minors, incapable adults, or deceased individuals if they are acting "for" the individual. Acting "for" the individual means acting to benefit the individual, or acting in that individual's best interest. The third party should not be acting to further their own interests.

Minors

5. Parents or guardians are not entitled to access the personal information of their capable children aged 12+.
6. Privacy rights may be exercised on behalf of a minor by the minor's guardian if the minor is **incapable** of exercising those rights.¹ UBC operates under the assumption that all minors enrolled in its undergraduate or graduate programs are capable of exercising their own privacy rights. As a rule, all other minors UBC deals with (e.g. children enrolled in UBC summer camps) should be assumed to be incapable of exercising their own privacy rights.
7. A minor's guardians are his or her parents, unless somebody else has been appointed as guardian by a court.² Before exercising privacy rights on behalf of an incapable minor, the guardian must give you the following documentation:
 - a. a written request for information, signed by the guardian;
 - b. proof of status of the guardian (e.g. birth certificate or court order);

¹ Section 3 of the FIPPA Regulations

² Sections 39 and 51 of the *Family Law Act*

- c. proof of guardian's identity (e.g. government issued ID);
- d. if the guardian is a parent, signed authorization of the other parent, with proof of the other parent's identity (or proof of custody if the first parent has sole custody); and
- e. details that confirm the guardian is acting for or in the best interests of the minor.

Adults Who Are Mentally Incapable

8. Privacy rights may be exercised on behalf of a mentally incapable adult by the individual's "representative".³ A representative may be any of the following:
 - a. a committee appointed under the *Patients Property Act*;
 - b. a person acting under a power of attorney;
 - c. a litigation guardian; or
 - d. a representative acting under a representation agreement, as defined in the *Representation Agreement Act*.
9. A representative must give you the following documentation:
 - a. proof that the requester has been appointed as the individual's representative;
 - b. proof of requester's identity (e.g. government issued ID); and
 - c. details that confirm the requestor is acting for or in the best interest of the adult.

Deceased Individuals

10. Deceased people have privacy interests, although these interests gradually diminish over time. Privacy rights may be exercised on behalf of a deceased individual by an "appropriate person".⁴
11. For an adult, an "appropriate person" is:
 - a. a committee appointed under the *Patients Property Act*;
 - b. if there is no committee, a personal representative (an executor of a will or an administrator of an estate); and
 - c. if there is no personal representative, the closest relative.
12. For a minor (an individual under the age of 19), an "appropriate person" is:
 - a. a personal representative;
 - b. if there is no personal representative, a guardian; and
 - c. if there is no guardian, the closest relative.
13. Before allowing an "appropriate person" to exercise a deceased individual's privacy rights, you must receive the following documentation:
 - a. a written request for information, signed by the requester;
 - b. proof of death (e.g. death certificate);
 - c. proof of the requester's position as an "appropriate person";
 - d. proof of requester's identity (e.g. government issued ID);

³ Section 4 of the FIPPA Regulations

⁴ Section 5 of the FIPPA Regulations

- e. if the requester is a parent of the deceased, signed authorization of the other parent, with proof of the other parent's identity (or proof of custody if the requester has sole custody);
 - f. details that confirm the requestor is acting for or in the best interest of the deceased individual.
14. There are special rules for granting access to personal information about persons who have been dead for more than 20 years. In these cases, the UBC Archives may release this information for archival or historical purposes.⁵ Questions about this should be referred to the University Archivist.

Modifying or Waiving Documentation Requirements

15. The foregoing documentation requirements may be modified or waived for compassionate reasons or in other special circumstances. You must consult with the Legal Counsel in the Office of the University Counsel before modifying or waiving documentation requirements.

⁵ Section 36(1)(c) of FIPPA