

QUESTIONS AND ANSWERS

MLA's CONSENT FORM

March 5, 2019

DEFINITION

1. What is "Personal Information"?

Personal information is information about an identifiable individual that is of a personal nature including name, home phone, home address, personal views or opinions of the individual, employment history, gender, family or financial status and personal identifiers (i.e. driver's license number). (See section 24 of *The Freedom of Information and Protection of Privacy Act (FOIP)*)

2. What is "Personal Health Information"?

Personal health information is information about an individual's physical or mental health, information gathered in the course of receiving a health service from a trustee and registration information. (See section 2(m) of *The Health Information Protection Act (HIPA)*)

WHEN DO I NEED IT?

3. If I get a call from a pay phone with a Citizen needing emergency shelter or concerned about some other safety issue, what do I do?

An MLA office must comply with Part IV of FOIP. Section 29(2) of FOIP allows disclosure of information where health and safety are at risk. The MLA can make the necessary telephone call to deal with the emergency. If the MLA will continue to be involved in the situation, he or she should follow up and get the Consent Form (Consent).

4. A Citizen called me with a problem and I want to call the Ministry or office and ask that they call the Citizen and give them his or her telephone number, do I need Consent?

If the telephone number is publically available, then you can provide it without consent. You can also provide it where subsection 29(2) of FOIP and section 16 of the FOIP Regulations allows for disclosure without consent if it is for the Citizen's health and safety, or if you are trying to get a benefit or assist in services for the Citizen. Though not required in these circumstances, you could get the Citizen's verbal consent and note it on the file.

5. What if I am just referring someone to a Ministry or office?

If you discuss an issue with a Citizen and decide that the best thing to do is suggest that he or

she go to a particular Ministry or office, then you don't need to get a Consent signed as you will have no role in resolving the Citizen's complaint. If you are going to refer the matter to the Ministry or office directly over the phone or by email, you should give the least amount of information necessary to allow the Ministry or office to understand the issue and call the Citizen. No written consent is necessary but obtaining and documenting verbal consent is wise.

6. What if I am just forwarding a request (letter or email) for assistance to a Minister or Ministry to deal with?

In this instance, you do not need the written Consent but good practice would be to note a verbal consent as this is a disclosure of personal information. You are asking the Minister or Ministry to handle the matter. If you expect follow up communications, then you should get a written Consent and provide it to the Minister or Ministry.

7. Is a verbal consent good enough?

There will be instances where you are directing a Citizen to a Ministry or public body and there is no use or disclosure of personal information, so a written consent would not be required. If you will be following up with a Minister, Ministry or office, you will want to obtain a written Consent and provide it to the Ministry or office. If you only have a verbal Consent, then you have no consent to provide.

8. What if a Citizen contacts me about maintenance of spousal or children support?

You can have the Consent signed, or you can rely on section 5 of *The Enforcement of Maintenance Orders Regulations*, which allows the Director of Maintenance Enforcement to provide you with information.

9. If a Citizen attends at an MLA's Constituency office, do I need to get the Consent?

- Because you may not know where things will go to solve the Citizen's problem, it is best practice that you obtain a Consent.
- Since the Citizen is attending at your office it is quite easy to ask him or her to sign the Consent.
- Anytime you are unsure, the best thing to do is obtain a Consent.

10. If a Citizen writes, calls or attends at a Minister's office requesting assistance regarding an issue related to that Ministry, does the Minister require the MLA Consent form?

- Where a person inquires directly with the Minister responsible for a matter and the inquiry relates solely to matters within the Ministry, no consent is required.
- Where a person inquires of a Minister and it is determined that the inquiry will be sent on to the appropriate Minister:

- No consent is needed if that Minister will have no further involvement;
- Consent is required if that Minister is to be copied on the response which is provided to the Citizen or to receive any personal information or personal health information.
- Subsection 29(2) of FOIP and section 16 of the FOIP Regulations allows for certain disclosures of personal information without consent, thus this advice can be given.

11. What if a public body insists on having their Consent signed?

The Information and Privacy Commissioner will be encouraging all public bodies to accept the MLA Consent contained in the Code of Conduct. SGI has indicated it will not require a second Consent.

HOW DO I USE/COMPLETE IT?

The questions and answers refer to the Consent form contained in the MLA's Code of Conduct and can be viewed on our website at <https://oipc.sk.ca/resources/privacy/> "For Elected Officials."

12. The Consent asks for name, address, telephone numbers and email. What if the Citizen does not want to give all that information?

Your office needs some contact information. The Ministry or office you give the Consent to will want to ensure they are dealing with the right person. Name and address usually provides sufficient identification. If a person does not want to provide it, that does not invalidate the Consent. For example, individuals affected by domestic abuse, victims of sexual violence or stalking may be reluctant to give an address and that should be respected. Telephone numbers and emails are optional and are therefore contact information not proper identification. Also you might collect these for yourself but not put it on the Consent. When there are concerns with same name (e.g. Smith) a public body might need more detail to properly identify the person. Similarly, if the matter is needed to be passed on to a public body, the public body may ask for the date of birth to ensure proper identification.

13. After the Consent is signed, can the Citizen or anyone else modify the form?

A good practice would be to refrain from modifying the form after it is signed. If a change occurs, the Citizen should be required to initial each change made and an amended copy should be sent to all those who received the "original" Consent.

14. What is meant by an informed and voluntary consent?

Consents should be informed and voluntary. MLA's or Constituency assistants should take the time to briefly explain to the Citizen what they are consenting to. A discussion about collecting, using and disclosing information and the implications of doing so should

take place. The purpose of collection should also be discussed.

15. What if the Citizen says, “solve it confidentially” but later says, “solve it publically”?

Have the Citizen check it off on the Consent, **initial it**, and send the amended copy to those who receive the original.

16. What about signing the Consent?

You can send a Citizen an electronically fillable Consent form. The fillable form could be filled in electronically (including the name in the signature line) and sent back to you by the Citizen via email.

If you have all of the other requisite information (purpose, identifying and contact information) in an email, it would also be sufficient for the MLA to send the Consent form by return email to the Citizen and have the Citizen email back indicating that he or she has read the Consent and agrees to it.

17. Can I or should I have the Citizen initial the checkoff circles?

You are free to ask for initials either in the circle or beside the circle. It is not necessary but it adds to the certainty that the Citizen has agreed.

18. The Consent has a space to set out the purpose, does that have to be filled in or what if the Citizen has many issues?

A person consents to the collection, use or disclosure of personal information for a particular reason. In so doing, one is not consenting to collection or disclosure for a different reason. That is why the purpose is referred to in the Consent. If a Citizen is consenting to multiple purposes, you might use wording like “to resolve all my issues with Social Services” or “all complaints with the Worker’s Compensation Board”.

19. What if the Citizen does not speak English?

In these instances, the Consent would have to be read over to the Citizen in his or her language, possibly with the use of a translator. The Citizen would then be asked to sign the English form of Consent with his or her mark or signature. You may want a second witness. There could be translations of the Consent form but because the form will be handed to others, the English version would need to be signed.

20. What if the Citizen is illiterate or blind?

Where the person is illiterate, I would suggest the Consent be read over to him or her and then ask him or her to sign or make a mark. You might have a second witness sign just to increase credibility.

The same process would also be used for a person who is blind. If a blind person required a copy of the Consent in braille, my office could be contacted to prepare a braille copy.

21. What if the person is mentally incapable?

It would be necessary to discuss with the person to see if he or she understands the nature of the Consent and understands the consequences of signing the Consent. If he or she understands the nature and consequences, he or she can sign their own Consent.

If the person has a court appointed property guardian, the guardian can sign if the issue relates to property or financial matters. (Review the Court Order for limitations)

If the person has a court appointed personal guardian, that person can sign for the purpose of non-financial matters. (Review the Court Order for limitations)

If the person has appointed a proxy under a Health Care Directive, the proxy could sign the Consent if the purpose is to deal with a personal health care decision. (Section 19 of *The Health Care Directives and Substitute Health Care Decision Makers Act*)

If the person has appointed a property attorney under a power of attorney, the attorney could sign the Consent for issues dealing with property. (Check the Power of Attorney for limitations) If the attorney is appointed for a personal matter, he or she could sign the Consent for the purpose of dealing with a health care decision on a personal matter. (Check the Power of Attorney for limitations)

In all of the above, you should take a copy of the Court order, health care directive or Power of Attorney and put it on your file.

22. If the information is about a child under age 18, who should sign?

Where there is a child under 18 whose personal information is being collected, used or disclosed, the abundantly cautious approach is to get the Consent of either parent or guardian. If the child is of a mature age and understands the issue, you will want to have the child sign the Consent. Unique circumstances may arise where you may wish to get legal advice.

23. What if the person does not want to pass the file to my successor or have the file destroyed?

The last two check boxes should be left unchecked.

These checkboxes are not essential but provide the MLA with some direction regarding the file, once the MLA is done.

In relation to MLAs that are Ministers, *The Archives and Public Records Management Act* creates the rules that Ministers must follow in transferring records to successors and maintaining records. The rules set by the Act will apply to those records regardless of whether a Citizen chooses to check any of the boxes on the Consent form. To avoid confusion, Ministers may wish to consider removing those last two check boxes from the Consent form that their office uses.

24. Will the Consent work in all instances?

The Consent should work in all instances. However, if a legislative provision has imposed strict confidentiality provisions, then the Citizens or the MLA will have to comply with those provisions. (e.g. *The Adoption Act*).

The form is intended to allow for the provision and receipt of information from parties outside of a Ministry in order to deal with the purpose identified. However, those outside parties may want a specific Consent authorizing the disclosure of information. If this is the case, the form can be modified as indicated below.

25. Can an MLA or Minister amend the Consent to include names of public bodies or otherwise change the Consent?

The principle in the Code of Ethics requires the MLA, including a Minister, to use the form but with appropriate modifications. What is appropriate is a matter of degree. Adding specific additional public bodies would be acceptable. Authorizing third parties (RHAs, school boards, etc.) to disclose information that may be needed to deal with the issue. Deleting the portion at the bottom regarding transferring or destroying the file would be acceptable, and may be desired by Ministers because of the issues discussed earlier. Other modifications are possible provided it does not change the overall intent of the form.

Also if each MLA office makes changes, then we could end up with 59 versions of the form.

26. How long is a Consent valid?

The Consent is valid for as long as it takes to resolve the issue.

27. What if the Citizen wants to modify the form?

This would be acceptable to the extent that the Citizen limits the people you share information with. Extensive revisions should be discouraged because that changes the nature of the Consent. The Consent can always be revoked by the Citizen.

28. What if the Citizen agrees to release personal information but not personal health information?

Cross out “personal health information” on the form and have the Citizen initial it. Once you have clarified that the Citizen does not want personal health information to be shared, do not share any personal health information with anyone. Before forwarding on any correspondence from the Citizen, review and mask or sever any personal health information found.

29. Where can I get the Consent Form?

You can get the “Original” Consent form, approved by the Legislative Assembly at <http://www.legassembly.sk.ca/mlas/code-of-conduct/consent-form>. This form is fillable online; you can save it and then print or email it.

Many have asked about changes to the Consent form. The Code of Ethical Conduct, Principle 13, provides for using the form “with appropriate modifications”. It is important that those changes do not change the nature of the form. If the form gets changed too much, you run the risk of someone not accepting it.

GENERAL

30. Can I use the same Consent to solve another problem that the Citizen has?

The Consent form has a space to fill in the purpose. The form should be used to resolve the issue that relates to the stated purpose. Once the issue is resolved and the purpose met, the form should not be used further.

If a Citizen comes in with a new problem or issue, another Consent form should be used with the purpose filled in on the form.

31. What if a person signs a Consent and then dies before the issue is resolved?

The more cautious approach is to have the Executor or Administrator sign a new Consent. Then keep both signed Consents on your file.

32. What if the family of a deceased person wishes to press an issue?

A deceased’s personal information is protected for 25 years and his or her personal health information is not to be released for 30 years.

Only the Executor or Administrator can obtain the information or consent to its release. The Executor’s authority comes from the will and an Administrator’s authority comes from the court issued Letters of Administration. The Executor or Administrator is limited to obtaining personal information related to estate matters.

33. How many copies should I make or have signed?

It would be best to decide on the number of agencies or Ministries you are going to give the Consent to and then have the Citizen sign that many copies. Some public bodies may accept a scanned or electronic copy. It never hurts to have a couple extras, just in case.

34. How long must I retain the signed Consent form?

The signed Consent form should be kept for as long as it is being relied upon to collect, use, or disclose personal information or personal health information. MLAs who are not Ministers might want to retain the signed Consent form for at least one year after the Consent was last relied upon to collect, use, or disclose personal information or personal health information. MLAs who are Ministers will have to comply with the record retention schedules set out under *The Archives and Public Records Management Act*, applicable to their offices.

35. What if I have a unique complex situation?

Where there is a unique complex set of circumstance, you can call the law clerk (306 787-2298) or the Information and Privacy Commissioner (306 798-1601 or 306 798-1602) or you can contact a private lawyer.

36. What if a Citizen revokes a Consent?

If a Citizen verbally or in writing revokes a Consent, you should treat your permission to collect, use or disclose personal information or personal health information as at an end. You should advise those you provided a copy to of the Consent that the Consent has been cancelled.

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