



February 12, 2021

The Department of Justice
Government of Canada
Ottawa, ON K1A 0H8

Re: Modernizing Canada's *Privacy Act* - Online Public Consultation

Dear Minister Lametti,

I am writing to you on behalf of OpenMedia, a community-based non-profit organization that works to keep the Internet open, affordable, and surveillance-free. We work toward informed and participatory digital policy by engaging hundreds of thousands of people in protecting our online rights. Our community comprises approximately 235,000 people throughout Canada.

Thank you for engaging the public around upcoming revisions to Canada's *Privacy Act*. We welcome the opportunity to share public input to this long-overdue process. After considering how best to engage our community in the *Privacy Act* consultation process, we created a companion online survey that featured a subset of questions from the one featured on the *Let's Talk Privacy Act* website.

We reduced the number of questions by over half, rephrased a few questions we found unclear, and have added a few that addressed additional reform options we consider important. More than 4,000 participants completed our survey and we're proud to report that respondents came from every province and territory in Canada. All of the questions and responses, along with some demographic information, are appended to this letter for your consideration and use. We would like to take a moment to highlight some of the findings from our survey.

The most prominent finding from our survey is the massive support for increasing the regulatory role of the Privacy Commissioner of Canada in the public sector. Several of our unique questions centred around this theme:

- 96.9%* of respondents believe it is important that the oversight of the handling of personal information by federal departments and agencies is done by an entity outside of government, like an independent third-party;
- 95.2% of respondents agree with giving the Privacy Commissioner additional authorities to ensure that federal government departments and agencies comply with Canadian privacy laws;
- 94% of respondents agree with giving the Privacy Commissioner the ability to order federal government departments and agencies to stop collecting, using, or disclosing personal information;
- 93.4% of respondents agree with giving the Privacy Commissioner the ability to compel federal departments and agencies to adopt personal data handling practices



- 94.8% of respondents agree with giving the Privacy Commissioner the ability to proactively investigate privacy related issues with federal government departments and agencies;
- 84.9% of respondents agree with giving the Privacy Commissioner the ability to compel federal departments and agencies to provide a right of access to an individual's personal information (and 94% of respondents agreed that they should have a right to access their own personal information in a timely manner).

Building on the theme of accountability, our survey results show that there is enormous public support for greater transparency measures from government when it comes to how public bodies handle personal information:

- 100%* of respondents believe it is important to have a right to know what information a federal government department or agency has about them, how they use it, and how they can share it;
- 99.3%* of respondents believe it is important that federal government departments and agencies produce transparency reports on requests for personal information from law enforcement agencies;
- 99.1%* of respondents believe it is important to create a new category with special protections for sensitive information, like health information, biometric data, or data that can reveal personal opinions and beliefs.

Our survey findings also show that Canadians support explicit consent being the primary mechanism for which public bodies collect, use, and disclose personal information:

- 83.9% of respondents felt uncomfortable about federal government departments and agencies being able to share personal information without their explicit prior consent (including 61.1% feeling totally uncomfortable);
- 75.5% of respondents felt uncomfortable with federal government departments and agencies being able to share de-identified personal information with each other without explicit consent.

Our survey respondents were also highly sensitive to purpose and context when it comes to the collection and disclosure of their personal information:

- Respondents were on average 18.6% less comfortable with their personal information being shared with an entity outside of the federal government for a different purpose than it was originally collected;
- This discomfort was most pronounced when shared with provincial, territorial, and municipal governments (+41%), and with band councils or Indigenous governments (+25.9%). This suggests that purpose is almost equally important to consent in relation to the collection and disclosure of personal information depending on context;



- Respondents were overwhelmingly uncomfortable with personal information being shared with foreign governments (93.8% for the same purpose, 97.8% for a different one) and private companies (95.7% for the same purpose, 97.8% for a different one) without explicit consent.

Our survey results indicated there is a clear public desire for harmonizing public and private sector privacy legislation, which would help to simplify the obligations of public bodies and private entities when it comes to the protection of personal information, along with removing some of the difficulties that arise when personal information flows between the public and private sectors, and delineating the regulatory role of the Privacy Commissioner of Canada:

- 86.2% of respondents believe that the public sector should be held to the same standards as the private sector when it comes to the protection of personal information.

Lastly, the survey results show an interest in ‘future-proofing’ the legislation by providing a framework around the use of artificial intelligence. As previously noted by the data, this framework should be centred around principles of accountability and transparency:

- 81.3% of respondents believe that they should have a right to know if federal government departments and agencies are using artificial intelligence to make a decision that affects them;
- 82% believe they should have a right to request human involvement in a decision-making process that relies on computerized automated processes, such as artificial intelligence.

We thank the Department of Justice for the opportunity to contribute to the consultation process and will make ourselves available to discuss our survey, methods, and findings. We are also hopeful that, in the spirit of transparency, the Department of Justice will provide the public with an anonymized version of the full dataset of their consultation responses, including to the online survey component. We look forward to the next steps of the consultation and to further opportunities for public debate and consultation as the department moves through the process of building a legislative amendment proposal.

Sincerely,

Bryan Short
Digital Rights Campaigner
OpenMedia

Matt Hatfield
Campaigns Director
OpenMedia

*Due to an error, some respondents did not see every question. In the data, the questions that were missed are represented with N/A. Typically, the N/As were only 2-3% of total responses. For questions 15-20, however, these N/As exceeded 15% of the total responses and so were removed from the percentages quoted here.