BC Archives

ACCESS TO PERSONAL INFORMATION FOR RESEARCH OR STATISTICAL PURPOSES:

INTRODUCTION TO THE APPLICATION AND AGREEMENT FORM

The Freedom of Information and Protection of Privacy Act:

The Legislature of the Province of British Columbia passed the Freedom of Information and Protection of Privacy Act, RSBC 1996, c. 165 ("the Act") on 23 June 1992 and it came into force on 4 October 1993. The Act covers all records in the custody or control of public bodies with only a few exceptions, including records placed in the British Columbia Archives (BC Archives) by a person or agency other than a public body, and certain judicial records. The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy. To achieve this, the Act contains the following features:

- The public has a general right of access to records.
- Exceptions to the right of access are limited and specific. These exceptions protect the legitimate needs of government for confidentiality in certain instances.
- Individuals have a right of access to, and a right to request correction of, personal information about themselves.
- Privacy is protected by the prevention of unauthorized collection, use or disclosure of personal information by public bodies. Personal information may not be disclosed to any person other than the individual to whom the information relates, except in certain limited circumstances.
- Decisions to disclose or withhold information under the Act are subject to independent review by the Information and Privacy Commissioner. Under the Act's appeal provisions, any decision relating to access to records can be appealed by the person requesting access or by an affected third party.

PLEASE NOTE: THE ACT ALLOWS UP TO 30 BUSINESS DAYS TO APPROVE AN APPLICATION.

Definition of Personal Information:

The Act defines personal information as "recorded information about an identifiable individual." This includes, but is not limited to, the following types of information:

a) the individual's name, address or telephone number,
b) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
c) the individual's age, sex, sexual orientation, marital status or family status,
d) an identifying number, symbol or other particular assigned to the individual,
e) the individual's fingerprints, blood type or inheritable characteristics,
f) information about the individual's health care history, including a physical or mental disability,
g) information about the individual's educational, financial, criminal or employment history,
h) anyone else's opinions about the individual, and
i) the individual's personal views or opinions, except if they are about someone else.

Section 22 of the Act determines whether the release of such information would constitute an unreasonable invasion of privacy.

Research Agreements:

One circumstance where personal information may be disclosed is when the disclosure is for research or statistical purposes. Section 35 of the Act allows public bodies to grant researchers the privilege of access to records containing other people's sensitive personal information, but only if certain confidentiality terms and conditions are met. This ensures that the privacy of the individuals identified in the records is protected.

Section 35 allows a public body to exercise the discretion to disclose personal information for a research purpose, including statistical research, only if the following conditions are met:

a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form or the research purpose has been approved by the commissioner,

a.1) the information is disclosed on condition that it not be used for the purpose of contacting a person to participate in the research;

b) any record linkage is not harmful to the individuals that the information is about and the benefits to be derived from the record linkage are clearly in the public interest,

c) the head of the public body concerned has approved conditions relating to the following:
   (i) security and confidentiality;
   (ii) the removal or destruction of individual identifiers at the earliest reasonable time;
   (iii) the prohibition of any subsequent use or disclosure of that information in individually identifiable form without the express authorization of that public body, and

d) the person to whom that information is disclosed has signed an agreement to comply with the approved conditions, this Act and any of the public body's policies and procedures relating to the confidentiality of personal information.

Requests by researchers for access to records in the custody and control of BC Archives that contain personal information are administered through the use of an "Application and Agreement for Access to Personal Information for Research or Statistical Purposes," generally referred to as a research agreement. These are legal agreements and will only be authorized for a bona fide research project. Access privileges are granted only to the person or persons who enter into the research agreement and only for the purpose stated in the agreement. Any additions or amendments to the agreement require the approval of BC Archives.

A research agreement, once approved, gives the researcher immediate access to the requested records. It is advantageous to the researcher because it avoids possible delays caused by BC Archives' need to examine large numbers of documents, line by line, to remove personal information. Further, since the researcher will not be reading partial documents, the meaning of the records may be more clear.

Completing the Application:

BC Archives will consider the date when the complete research agreement application is received as the date of the request for access. A carefully completed form will hasten the process by which access to the records can be authorized.

The following documents are required for a research agreement application to be complete:

- The attached form entitled "Application and Agreement for Access to Personal Information for Research or Statistical Purposes." This form identifies the researcher and the records requested, and enumerates the terms and conditions under which access is permitted. It must be completed and signed by the researcher. A friend, colleague, or BC Archives staff person must witness the researcher's signature.

- A detailed (and preferably typed) description of the proposed research project for which the records are being requested (see Part B of the research agreement for a list of what this description must include).

- The researcher's curriculum vitae or resume, including 3 references (see Part B).

Duration of Access Privileges:

Access privileges to the original records requested are granted for a limited period of time, generally for up to two years from the date of approval of the research agreement. **If the researcher requires more time to complete the research project, they must submit a written request to BC Archives for an extension of the expiry date, BEFORE IT OCCURS; otherwise a new application will be required.**

Moreover, under the terms and conditions of access, the researcher agrees to destroy all individual identifiers contained in any information removed from BC Archives in the form of research notes, photocopies and/or databases. This destruction will take place at the earliest possible time, and not more than two years from the date of approval of the research agreement.

Additional Exceptions:

The research agreement only concerns access to personal information. In certain circumstances, the Act's other exceptions to the right of access, such as legal advice, information harmful to law enforcement, information harmful to the financial interests of the Province, and information harmful to third party business interests, may apply to the requested records. If any of these other exceptions are applicable, or if access is restricted under legislation other than the Freedom of Information and Protection of Privacy Act, an Information and Privacy Section analyst will explain your options.

Youth Criminal Justice Act (replaced the Young Offenders Act, 1 Apr 2003)

Access to some personal information is restricted under both the Freedom of Information and Protection of Privacy Act and the Youth Criminal Justice Act (Canada), SC 2002, c.1. The Youth Criminal Justice Act, which concerns the treatment of and information about young people who have come into contact with the law, generally restricts access to information that could be used to identify them. Section 126 of the Youth Criminal Justice Act does, however, provide for access to records containing young offender information that are held in provincial archives under certain conditions. Specifically, section 126 (Records in the custody, etc., of archivists) provides as follows:

> When records originally kept under sections 114 to 116 are under the custody or control of the National Archivist of Canada or the archivist for any province, that person may disclose any information contained in the records to any other person if
>
> (*a*) a youth justice court judge is satisfied that the disclosure is desirable in the public interest for research or statistical purposes; and
>
> (*b*) the person to whom the information is disclosed undertakes not to disclose the information in any form that could reasonably be expected to identify the young person to whom it relates.

If the records to which access is requested do, or might reasonably be expected to, contain information about young offenders, an undertaking pursuant to section 126(b) of the Youth Criminal Justice Act will be required. An Information and Privacy Analyst will contact you and provide you with the undertaking form. Upon receipt of the completed and signed undertaking, and subsequent approval of an application by BC Archives, the application will be forwarded to the Provincial Court of British Columbia for the consideration of a youth justice court judge.

Review and approval process:

Each research agreement application must go through an approval process that consists of three steps. First, an Information and Privacy Section analyst will review your application and will contact you if any clarification or additional information is required. Second, the analyst will make a recommendation concerning the application, which is then reviewed by the Manager, Information and Privacy Section. Finally, all research agreements must be approved by the delegated head of BC Archives.

PLEASE REMEMBER, THE ACT ALLOWS UP TO 30 BUSINESS DAYS TO APPROVE AN APPLICATION.

Further Information about Research Agreements:

If you have any questions or would like further information about use of a research agreement for obtaining access to personal information held by BC Archives, please feel free to contact one of the analysts in the Information and Privacy Section. They may be reached by telephone at (250) 356-0698, or by writing to the following address:

Manager, Information and Privacy Section
British Columbia Archives
Royal BC Museum
675 Belleville Street
Victoria, B.C. V8W 9W2

Date of receipt: _____ Access request number: 292-30/ _____

BC ARCHIVES

APPLICATION AND AGREEMENT

for

ACCESS TO PERSONAL INFORMATION FOR RESEARCH OR STATISTICAL PURPOSES

Purpose: This form is for use in requesting access, for research or statistical purposes, to personal information found in records covered by the Freedom of Information and Protection of Privacy Act, RSBC 1996, c. 165 and the Youth Criminal Justice Act (Canada), SC 2002, c. 1. Once the researcher has signed this form and the terms and conditions of access have been approved by BC Archives and a youth justice court judge, this form becomes a legal agreement between the researcher and BC Archives.

Collection of the information on this form, and the conditions of access described, are authorized by Section 35 of the Freedom of Information and Protection of Privacy Act. Any questions about this form may be directed to the Manager, Information and Privacy Section, BC Archives, Royal BC Museum, 675 Belleville Street, Victoria, B.C., V8W 9W2, tel. (250) 356-0698.

PART A - Identification of Researcher

_____ _____
Name (last name/first name/initials) Registration Number

Address: _____ Telephone: _____

_____

_____

Please provide the following additional information, if applicable:

Institutional Affiliation: _____
(include department, if relevant)

Position: _____

Academic Advisor (if student): _____

PART B - Description of Research Project

Please attach the following information (preferably typed):

1) A general description of the research project (include the objectives of the project and the proposed method(s) of analysis).

2) An explanation of why the research project cannot reasonably be accomplished without access to personal information in individually identifiable form (i.e. personal information about named or identifiable individuals).

3) An explanation of how the personal information will be used, including a description of any proposed linkages to be made between personal information in the records requested and any other personal information (e.g. linkages between personal information found in mental health case files and newspaper reports about suicides).

4) The expected period of time during which access to these records may be required.

5) The process and timeline for the removal or destruction of individual identifiers associated with the records listed in Part C at the earliest possible time (please see Part E, Paragraph 14). If the retention of individual identifiers is required for the full term of the research agreement, please provide a detailed explanation.

6) The benefits to be derived from the research project.

Please also provide a copy of your curriculum vitae or resume. It should include education, research experience, and the names and addresses of three references.

PART C - Records Requested (Use additional sheets as required)

Please list all records containing personal information to which access is requested. This research agreement only covers records listed below. Any requests for changes or additions to this list after the application is submitted should be made in writing and will require approval in writing from BC Archives.

In each case, please provide the following: BC Archives identifying number (e.g. GR number); box, volume or reel number(s); GR title; file name(s); outside dates. If access to less than an entire box or reel is requested, please also provide the number(s) and title(s) of the file(s) requested.

Example: GR 1234, vol. 5 (Provincial Archives of B.C., Donor files), file 67 (Y-Z), 1975-1976.

1) _____

2) _____

3) _____

4) _____

5) _____

6) _____

Originals may be consulted only at BC Archives. Will you require that the above records be copied (at your expense) for viewing elsewhere?

Yes_____ No_____

PART D –Youth Criminal Justice Act (Canada)

If the records listed in Part C of this form contain information that is restricted from disclosure by the Youth Criminal Justice Act (Canada), SC 2002, c.1, I undertake not to disclose the information in any form that could reasonably be expected to identify the young person to whom it relates.

PART E - Agreement on Terms and Conditions of Access

If I am granted access to the records listed in Part C, I understand and will abide by the following terms and conditions.

Security

1) I understand that I am responsible for maintaining the security and confidentiality of all personal information found in or taken from these records.

2) The following person(s) will be working with me on this project and will have access to the requested personal information:

_____

_____

_____

Before any personal information is disclosed to these persons, I will obtain a written undertaking from each of them to ensure that they will not disclose that information to any other person and that they understand and will abide by the terms and conditions of the present agreement. I will maintain a copy of each such guarantee and will provide BC Archives with a photocopy.

[Please Note: BC Archives requires copies of the undertakings described above in order to process an application for a research agreement. These undertakings are required before approval will be granted. Please include them when submitting your application.]

No other person(s) will be given access to personal information disclosed under the terms of this agreement, whether contained in the original records, research notes, photocopies or databases.

3) None of these records (including copies of them or notes containing personal information taken from them) will be left unattended at any time, except under the conditions described in Paragraphs 4, 5 and 6, below. If I am using these records in the BC Archives Reference Area, and I must temporarily leave the room, I will hand them in to Reference or Security staff until I return.

4) All copies of the requested records and any notes that contain personal information taken from them will be kept at the following address(es):

_____ _____

_____ _____

_____ _____

_____ _____

5) Physical security at the above premises will be maintained by ensuring that the premises are securely locked, except when one or more of the individuals named in paragraph 2) are present, as well as by the following additional measures (e.g. locked filing cabinet):

_____

_____

6) Personal information taken from the records covered under this research agreement will be entered into and stored on a computer system.

Yes_____ No_____

If yes, please read and initial the attached Schedule A – Electronic Data Security.

7) I will permit BC Archives staff to carry out any measures deemed necessary to verify compliance with the terms and conditions set out in this agreement. Such measures may include, but are not limited to the following:

- on-site inspection of premises or computer databases to confirm that stated security precautions are in effect;
- receipt upon request of a copy of any written or published work based on research carried out under the terms of this agreement;
- verification from the researcher that the destruction of all information about identifiable individuals has been carried out by the date specified in this agreement.

8) Any application of data or information linkages (manual or computer) will be handled with the greatest consideration for personal privacy. Particular attention will be paid to linkages of personal information from government records with information in publicly available sources. I will not make any information linkages other than those specified in the description of the research project (Part B).

9) Papers or any other works which describe the results of the research undertaken will be written or presented in such a way that any personal information contained in them is rendered sufficiently anonymous that the individual to whom the information pertains cannot be identified. There will be no exceptions to this rule without prior written permission from BC Archives.

[The researcher should bear in mind that it is frequently possible to identify an individual by a combination of characteristics or variables, even if that person is not named. For example, many people might well know who is being discussed if mention is made of a tall female gas station attendant in New Denver who is 35 years old and was born in Windsor, Ontario. Therefore, anonymization may require more than simply removing names. The researcher is responsible for taking whatever measures are necessary to protect individual privacy.

This rule applies to ALL personal information in the subject records, including personal information about elected and other public officials, as required by section 35(c)(iii) of the *Act*. However, BC Archives routinely authorizes the use of such personal information in individually identifiable form, whenever the personal information is related to the public official's position and duties.]

10) Any case file numbers or any other individual identifiers which appear in my written or other work will be created by me and will not relate to any real case file number or identifier found in the records.

11) Any case file numbers or other individual identifiers to be recorded on computer will be created by myself or one of the persons listed in paragraph 2) and will not relate to any real case numbers found in the records.

12) Unless expressly authorized in writing by BC Archives, no personal information that identifies or could be used to identify the individual(s) to whom it relates will be transmitted by means of any telecommunications device, including telephone, fax, modem or electronic mail.

13) No direct or indirect contact will be made with the individuals to whom the personal information relates.

14) Individual identifiers associated with the records listed in Part C will be removed or destroyed at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project. At the latest (maximum 2 years), this will occur by:

_____/_____/_____
(year/month/day)

Any extension to this time limit must be approved in writing by BC Archives. The removal of individual identifiers will be done in a manner that ensures that any remaining information cannot be used to identify the individual to whom it relates. If necessary, this will be done by destroying copies of records or pages of notes in their entirety. Disposal of any research notes, photocopies or computer disks containing personal information must be carried out in a manner that ensures the protection of privacy.

15) I understand that I am responsible for ensuring complete compliance with these terms and conditions. If I become aware of a breach of any of the conditions of this agreement, I will immediately notify BC Archives in writing. Contravention of the terms and conditions of this agreement may lead to the withdrawal of research privileges, and BC Archives may also take legal action to prevent any further disclosure of the personal information concerned.

Signed at _____ , this _____ day of _____ , 20 __

_____ _____
Signature of Researcher Signature of Witness

_____
Name and Position of Witness

_____

PART F - Approval of Terms and Conditions

The terms and conditions of this agreement are hereby approved. BC Archives reserves the right to withdraw access to records without prior notice if this becomes necessary under the provisions of the Freedom of Information and Protection of Privacy Act.

The expiry date for access to the records listed in Part C is:

_____/_____/_____
(year/month/day)

_____ _____
Signature (BC Archives) Date

_____
Position

_____ _____
Signature (Youth Justice Court Judge) Date

SCHEDULE A

ELECTRONIC DATA SECURITY

1) Ensure the computer(s) used for accessing, viewing or storing any of the personal information taken from records covered under this research agreement is secured with a login and strong password. For Windows computers this means enabling user passwords and CTRL-ALT-DELETE access. Fast User Switching must be disabled. Macintosh computers enable login and password access by default.

2) Ensure the computer(s) used for accessing, viewing or storing any of the personal information taken from the records covered under this research agreement meet(s) the following anti-virus/anti-malware specifications. This is to ensure the computer and data manipulated with the computer is protected from various forms of attack including malware, key-stroke loggers and other forms of data theft. Be aware that attack software can "lurk" on an unprotected computer and collect data for later transmission even when the computer is disconnected from network access:
    a. If the computer runs Microsoft Windows (XP, Vista or Windows 7) then it should be protected with a "paid-for" commercial, well-regarded anti-virus/anti-malware program such as those available from Symantec, Trend Micro, McAfee, AVG and others. "Free" or "open-source" anti-virus solutions are not acceptable for use in this scenario.
    b. If the computer runs Microsoft Windows (XP, Vista or Windows 7) then the Windows firewall should be enabled and the machine should have Windows/Microsoft updates applied on a regular basis, preferably monthly.
    c. If the computer runs Microsoft Windows (XP, Vista or Windows 7) then it should be scanned on a regular basis with a standalone anti-malware/anti-spyware program such as Super Anti-Spyware, Malwarebytes or Ad-Aware, preferably monthly.
    d. If the computer is a Macintosh then it should be protected with a "paid-for" commercial, well-regarded anti-virus/anti-malware program such as TrendMicro "Smart Surfing for Mac", Norton "Internet Security for Mac" or McAfee "VirusScan for Mac". "Free" or "open-source" anti-virus solutions are not acceptable for use in this scenario. It is a fallacy that Macintosh computers are "immune" to viruses, malware and other types of "attack" software and therefore require no anti-virus software.

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Initials

3) Ensure any records covered under this agreement that contain personal information are stored on a secured, encrypted hardware device such as a hardware-encrypted USB memory stick that utilizes strong 256-bit FIPS-compliant hardware encryption and password or biometric access security. Examples of such devices would be the Lexar “JumpDrive SAFE FIPS”, the Kingston “Data Traveller 5000” and the SanDisk “Cruzer Enterprise FIPS Edition” units.When using such a device it is imperative that you read and follow the directions that come with the device and always choose a strong, not-easily-guessed password of at least 8 characters. Biometrics-secured devices are exempt from this requirement. The secured storage device should always be stored in a secured location (eg: a locked cabinet) when not in use.

4) Ensure that any passwords used to access the encrypted storage device are NOT written down or recorded in any way. A password is of no use if it is easily guessed or, worse, written on a Post It note and attached to a screen or the USB device.

5) Ensure the computer used to access and manipulate data from records covered under this agreement is **disconnected** from any form of network - wired, wireless, Bluetooth, telephone-modem or otherwise - while records containing personal data are being accessed. It is imperative that no alternate access into the computer via any network or other means is available while the records contained on the encrypted storage device are open to the computer. To ensure compliance disconnect the network cable and turn off wireless and Bluetooth access while accessing data from the encrypted device.

6) Ensure you clean up any temporary files that are left on your computer after accessing any records containing personal data. This will ensure that no “footprint” is left behind that may contain personal data. On a Windows computer the “Disk Cleanup Tool” (available in XP, Vista and Windows7) on the Disk Properties page has appropriate selections for erasing temporary files. Macintosh computer users should open a command window and issue the command **sudo periodic daily** in order to erase temporary files. The computer should then be rebooted to complete the process and ensure any memory-resident data is cleared.

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Initials

7) If the computer is backed up in any way to any type of storage medium, ensure the secured storage device is **not** connected to the computer while the backup process is running. Under no circumstances will you allow the personal data contained within records covered by this agreement to be copied out to any other storage device or storage medium including, but not limited to other non-secure USB devices, hard disks and cloud storage mediums (egCarbonite, Mozy, Amazon S3). Backups should only be performed after the tasks in Step 5 above have been performed.

8) Ensure the computer is never left unattended while the secured storage device is attached to the computer. The secured storage device should be closed and disconnected from the computer and the keyboard should be "locked" requiring a password for access.

9) At the end of this agreement, all media used to store records containing personal data covered under this agreement -- including the computer hard drive, the secured storage device and any other storage device that may have been used -- should be "sanitized" in order to remove all traces and remnants of personal data. The steps used to perform this sanitizing should conform to those defined by the Manager, Information and Privacy Section, BC Archives based on the level of sensitivity of the records in question. The US National Institute of Standards and Technology publishes a Guide for Media Sanitation (NIST Special Publication 800-88, http://csrc.nist.gov/publications/drafts/DRAFT-sp800-88-Feb3_2006.pdf) which details steps that can be taken to ensure compliance. The secured storage device should be securely erased/re-formatted (the device manufacturer should provide instructions on the needed process) and any files stored on the computer itself should be securely erased/destroyed (you may require a secure file deletion program in order to complete this step).

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Initials