



Type of law:
CIVIL LAW

PRIVACY



A 2022 ALBERTA GUIDE TO THE LAW

COPYRIGHT & DISCLAIMER

GENERAL

All information is provided for general knowledge purposes only and is not meant as a replacement for professional legal advice. If you have a personal question that requires legal advice, please consult a lawyer.

COPYRIGHT

Copyright 2022, Student Legal Services of Edmonton. All rights reserved. Copying any material, in whole or in part, is prohibited unless prior consent has been obtained. Some material may be subject to copyright from an outside source, and thus there may be different restrictions on the reproduction of this material.

LIMITATION OF LIABILITY

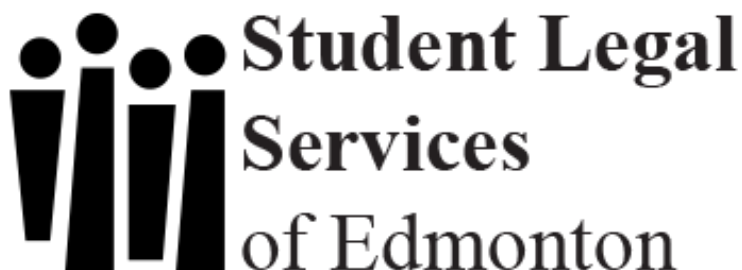
Student Legal Services of Edmonton is not liable for any loss or damage caused by an individual's reliance on information or material obtained from Student Legal Services of Edmonton. By accessing the information, individuals agree that any usage is at their own risk.

INFORMATION AND OPINIONS

In some instances, information obtained by Student Legal Services may have been provided by outside sources. Even with the high standards set by Student Legal Services of Edmonton, we accept no responsibility for the accuracy and reliability of the material. Opinions and information provided by third parties does not represent that of Student Legal Services of Edmonton.

IMAGES

Icons made by Freepik from www.flaticon.com.
Infographics CREATED with CANVA



PRIVACY

Privacy rights in Canada are regulated by multiple Federal and Provincial Acts which protect an individual's personal information. While the definition of personal information varies slightly in each Act, they are similar.



"Personal information" is defined in the Privacy Act as "information about an identifiable individual that is recorded in any form."

You have privacy rights regarding the collection, use, and disclosure of your personal information.

1

COLLECTION

Individuals should generally be told the reason why their information is being collected, and then provide their consent to the collection of information.

2

USE

The information should be used solely for the reason it was collected unless an exception specified in the legislation applies.

3

DISCLOSURE

Any disclosure of personal information to an organization or individual should be done with the consent of the person unless an exception applies.

4

ACCESS

Individuals should be given access to information held on them and have the opportunity to request corrections.

5

IF YOUR PRIVACY IS BREACHED...

If an act is breached (ex. by having an application to review your personal information refused) an individual can report it to either the Federal or Provincial office of the Information and Privacy Commission for review of the decision. The Commissioners can also investigate any breaches of privacy or violation of rights provided under the acts.

Table of Contents



WHAT IS PRIVACY?	1
What is Personal Information?	1
What are your Privacy Rights Generally?	2
When do these Acts apply?	4
COLLECTION, USE, AND DISCLOSURE	5
Collection	5
Use	5
Disclosure	6
PROTECTION OF INFORMATION	7
Access to Information	7
Access Requests and Requesting Changes to Information	7
APPEALING DECISION AND MAKING COMPLAINTS	8

PRIVACY AND THE GOVERNMENT **9**

The Federal Government **9**

The Provincial Government **10**

PRIVACY AND PRIVATE BUSINESS **11**

PIPEDA (For Federal Works) **11**

PIPA (For Provincially Regulated Private Companies) **12**

PRIVACY AND YOUR EMPLOYER **12**

Collection, Use, and Disclosure of Personal Employee Information **13**

Employer Surveillance **13**

OTHER AREAS OF PRIVACY LAW **14**

Health **14**

Motor Vehicles **16**

WHO CAN I CALL FOR MORE HELP OR INFORMATION? **18**

WHAT IS PRIVACY



As technology expands, concerns over the privacy of personal information have grown.

Something as simple as an online purchase will give a company information on your name, where you live, and your credit card information. What are your rights around when this information is collected, used, or disclosed?

In general, your personal information should only be gathered, used and disclosed with your knowledge for legitimate purposes. It must also be stored and shared in a way that keeps it confidential.

Privacy rights in Canada are regulated by different acts both Federally and Provincially. This pamphlet will explore what your privacy rights are and where and when different legislation applies.

Depending on the specific situation, there are several different pieces of privacy legislation that may apply. The acts discussed in this pamphlet are:

- Privacy Act
- Personal Information Protection and Electronic Documents Act (“PIPEDA”)
- Freedom of Information and Protection of Privacy Act (“FOIP”)
- Personal Information Protection Act (“PIPA”)
- Health Information Act (“HIA”)
- Access to Motor Vehicle Information Regulation (“AMVIR”)

This pamphlet looks at the general types of rights covered under each piece of legislation, but the exact rules under each may vary.

WHAT IS PERSONAL INFORMATION?

The goal of privacy legislation is to protect an individual’s personal information. While the definition of personal information varies slightly in each Act, they are similar.

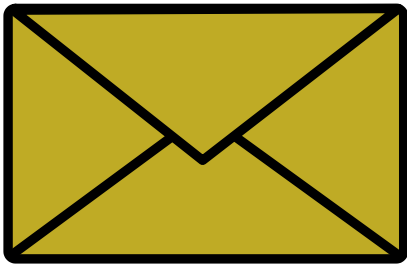
The definition from the Privacy Act is typical of what each definition of personal information covers.



“Personal information” is defined in the Privacy Act as “information about an identifiable individual that is recorded in any form”.

This information includes:

- The **individual’s race, national or ethnic origin, colour, religion, age or marital status;**
- The individual’s **education or their medical, criminal or employment history** or information relating to financial transactions they have been involved in;
- **Any identifying number, symbol or other particular assigned to the individual;**
- The **individual’s address, fingerprints or blood type;**



- The **individual’s personal opinions or views** except when they are about another individual;
- **Any correspondence sent to a government institution** by the individual that is implicitly or explicitly of a private or confidential nature, and any replies that would reveal the contents of the original correspondence;
- **The views or opinions of another individual about the individual;**
- The individual’s name if it would reveal any other personal information.

WHAT ARE YOUR PRIVACY RIGHTS GENERALLY?

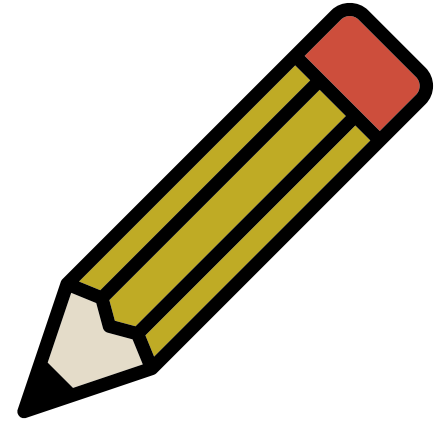
Despite the differences between the Acts, there are some general categories of rights that individuals have under each one. However, each Act approaches these rights slightly differently. See the specific sections below for some prominent differences, or double check the applicable Act for the specific rules.

To begin with, each Act places obligations regarding the collection of information on the organization or institution collecting it. If possible, the organization should attempt to get the information from the individual directly.

Further, information should only be collected when it directly relates to a goal or program of the organization. Generally, the individual should also be notified of the purpose for which their info is being collected.

The Acts also include rules regarding the protection of your information. **These rules can include when the organization or institution can disclose your information without consent, and rules regarding the procedures that should be put in place to protect the information an organization has control over.**

One of the **essential features of each Act is giving individuals the right to access and review the personal information that organizations have on them.** Individuals generally have the right to request to either review the information or receive a copy of it.



Upon reviewing the information, if the individual thinks that there are mistakes, or there are additions they wish to make, they may request the information be changed. The organization will generally have to either make the change or put a notation on the file that the change was requested and denied.

Finally, each Act sets out a review process which is independent from all of the institutions and organizations covered by the Act.

For instance, for FOIP, PIPA and HIA the Office of the Information and Privacy Commissioner of Alberta handles all reviews.

The specific powers the reviewing body has are different depending on which legislation applies. In all cases the reviewing body will review refusals to access your information, or refusals to make requested changes

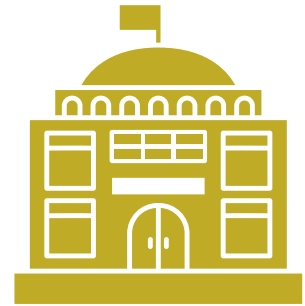
They generally also look into complaints regarding any of the rights provided, as well as breaches of privacy. The exact powers they have to deal with or remedy breaches will vary in each case.

WHEN DO THESE ACTS APPLY?

One situation where privacy rights is a concern deals with **government bodies and agencies, or government employers.**

If dealing with the **federal government**, then the **Privacy Act** applies.

If dealing with the **Alberta provincial government** then the **Freedom of Information and Protection Act ("FOIP")** applies.



A second situation involves private businesses, organizations or employers.

If the business is **federally regulated** (such as banks, railroads or mining) then the **Personal Information Protection and Electronic Documents Act ("PIPEDA")** applies.



Alternatively, when dealing with a **provincially regulated** business the **Personal Information Protection Act ("PIPA")** applies.

In Alberta, **health specific privacy information**, including employer requests for medical information, is dealt with through the **Health Information Act ("HIA")**.

Finally, information involving **motor vehicles** is covered by the Access to **Motor Vehicle Information Regulation ("AMVIR")**.



It is important to know which legislation you are dealing with, as each covers different types of information, has different rules that must be followed, and allows for different types of remedies.



More information on when the acts apply is below.

COLLECTION, USE, AND DISCLOSURE



Each of the Acts sets out rules for collection of information, its use and its disclosure.

COLLECTION

Generally, **information may only be collected when it relates directly to an operating program or activity of the institution.**

- When possible, the information should be directly collected from the individual to whom the information relates.
- The individual should also be told of the purpose that the information is being collected for.

Exceptions to these requirements can include: when compliance would result in the collection of inaccurate information; or when it would defeat the purpose for which the information is being collected.

FOIP provides a list of what the individual should be informed about when information is directly collected:

- The purpose for which the information is being collected;
- The specific legal authority allowing for collection; and
- The title, business address and business telephone number of an employee of the public body or organization who can answer questions about the collection.

USE

Generally, **information about an individual can only be used with their consent.** That said, each Act sets out situations in which information can be used without an individual's consent.



For instance, PIPEDA includes the following situations:

- To investigate the contravention of a law;
- To act in respect of an emergency threatening the life, health or security of an individual;
- Information from a witness statement can be used to settle an insurance claim;
- When the person is in a business or employment situation and the use is consistent with the reason for which it was produced;
- When the information can be used for scholarly research or study, and the purposes of this research cannot be achieved without this information;
- When it is publicly available information;
- When it was initially collected without consent, either because it was in the best interests of the individual or because gaining consent would have compromised the information.

Organizations and public bodies that have an individual's information generally are under an obligation to ensure the information is accurate if it will be used in any way that directly affects the individual. **Organizations must also store this personal information for at least one year so that an individual can have the opportunity to access it.**

DISCLOSURE

Just like with use, the information an organization or public body has on an individual should generally not be disclosed without their consent.

There are exceptions in each Act however, for instance PIPEDA includes:

- To comply with a subpoena or warrant;
- When the request is made by a government organization with lawful authority and purpose;
- To investigate the breach of an agreement, contravention of a law, or fraud;
- To identify an individual that is injured, sick or deceased;
- Information must be given to assist in an emergency that threatens life, security, or health;

- Information from a witness statement can be used to settle an insurance claim;
- When the person is in a business or employment situation and the use is consistent with the reason for which it was produced;
- When the information can be used for scholarly research or study, and the purposes of this research cannot be achieved without this information.
- When 100 years have passed since the collection of the information, or 20 years have passed since the death of the person.

The public body or organization should keep a record of all the times an individual's record was disclosed, which then becomes part of the record.

PROTECTION OF INFORMATION

Organizations and public bodies have an obligation to protect an individual's information, this includes preventing incorrect or accidental disclosure.

The obligation to protect information may include making reasonable security arrangements against such risks as: unauthorized access, collection, use, disclosure or destruction.

ACCESS TO INFORMATION

ACCESS REQUESTS AND REQUESTING CHANGES TO INFORMATION

Generally, **individuals have the right to access information a public body or organization has on them upon request.**

Upon accessing the information, **individuals have further rights to request a correction be made to make the information accurate**, or, if a correction is rejected, to have a notation put on the file outlining the rejected request.

Further, **individuals generally have the right to have that correction or notation be communicated** to any person or body that has recently accessed the information.

Access can be given in different forms. **Usually it means that the individual may either physically examine the information or be provided with a copy of the information.**

Generally, a response to an access request must be given within 30 days, regarding whether access will be granted.



Refusal can occur when either the information does not exist or the refusal is permitted by a specific section of the Act in question.

For instance, **the institution may refuse to disclose information if it was gathered in an investigation**, if it is protected by solicitor-client privilege, or if it could threaten the safety of individuals.

See below for the exact ways to request access to information under each piece of legislation.

APPEALING DECISIONS AND MAKING COMPLAINTS



Individuals whose requests were denied, for access or information changes, have the right to appeal the decision.

This is generally done by the Office of the Privacy Commissioner of Canada or the Office of the Privacy Commissioner of Alberta, depending on the specific legislation the appeal falls under.

Further, the Commissioners are also able to investigate complaints. Examples of common complaints include privacy breaches or misuse of information.

The Commissioners have broad powers to address or correct the issue, as given by the specific legislation that the complaint is made under.

PRIVACY AND THE GOVERNMENT



THE FEDERAL GOVERNMENT

When dealing with the Government of Canada the Privacy Act applies.

The Privacy Act only applies to particular government institutions. The full list of institutions can be found in the “Schedule of Government Institutions” in the Privacy Act.

The Privacy Act does not apply to political parties or political representatives.

Under the Privacy Act individuals must be Canadian citizens or permanent residents to have a right to access the records a government institution, or government information bank, has on them.

Requests to access information should be made in writing to the government institution with control of the information or the personal information bank.

A personal information bank is a collection or grouping of personal information that is under the control of a government institution.

Individuals also have a right to have the information provided in either English or French, or in another format to accommodate any disabilities. If the institution fails to provide any of the rights outlined in the Privacy Act, a complaint can be made to the Privacy Commissioner and an investigation may follow.



To make a complaint, go to <https://www.priv.gc.ca/en/report-a-concern/file-a-formal-privacy-complaint/file-a-complaint-about-a-federal-institution/>.

THE PROVINCIAL GOVERNMENT

The legislation that applies when dealing with the Government of Alberta is the FOIP Act. FOIP applies to any records of personal information in the custody or under the control of provincial public bodies, with some exceptions.

These exceptions include include documents such as: court files, records under the control of an officer of the legislature or the Ethics Commissioner, and post-secondary teaching materials or research material. For the full list of exceptions see the FOIP Act s 4.



Individuals have a right to information that public bodies have on them, as well as general information the body has, and can request access to it for a fee.

For personal information there is no initial fee, but if the photocopying is more than \$10 you will be notified of the cost. For general information the initial fee is \$25.

To request access to the information an individual should provide a request in writing to the public body they believe has the information, requesting either to examine it or receive a copy. **The request should be responded to within 30 days.**



For more information, see <http://www.servicealberta.gov.ab.ca/foip/access-to-records.cfm>.

If your access request is denied you can request a review from the Office of the Information and Privacy Commissioner of Alberta.

For more information see <https://www.oipc.ab.ca/action-items/request-a-review-file-a-complaint.aspx>.

The Office of the Information and Privacy Commissioner of Alberta will also respond to privacy breaches, and review a public body's decision to release an individual's information.

PRIVACY AND PRIVATE BUSINESS



There are **two different types of legislation which apply to private businesses, usually depending on whether they are provincially or federally regulated.**

Examples of federally regulated industries include: banks, air transportation, telephone companies and radio and television broadcasting.

The vast majority of industries are provincially regulated, however. If an industry is federally regulated and also considered a “federal work” then PIPEDA applies.

Other industries, which are usually provincially regulated, fall under PIPA. PIPEDA also applies to all businesses when engaged in interprovincial and international business.

PIPEDA (FOR FEDERAL WORKS)

PIPEDA specifically applies to the collection, use or disclosure of personal information in the course of a commercial activity by a federal work.

PIPEDA does not cover business contact information that is collected, used and disclosed solely for the purpose of communicating with that person regarding their employment.

PIPEDA also **does not apply to not for profits and charity groups, or political parties and associations**, unless they are engaging in commercial activity outside their mandate.

To access your information **you must request access to the organization in writing.** There should be no cost, or the **cost should be minimal.** The organization may choose to either give you a copy of the information, or to merely give you access to it.



To file a complaint regarding how an organization has collected, used or disclosed your information go to <https://www.priv.gc.ca/en/report-a-concern/file-a-formal-privacy-complaint/file-a-complaint-about-a-business/>.

PIPA (FOR PROVINCIALLY REGULATED PRIVATE COMPANIES)

PIPA applies to private organizations under provincial jurisdiction, as well as the commercial activities of non-profits. Organizations under PIPA must develop and follow policies that meet its obligations under the Act.

To access your information you must request access to the organization in writing. The organization has a duty to assist you in your application. The organization may choose to either give you a copy of the information, or to merely give you access to it. The organization may charge a reasonable fee for providing access.

If you need help with your request contact the Private Sector Privacy Information Line for guidance at 780-644-7472, or at foiphelpdesk@gov.ab.ca. or go to <https://www.oipc.ab.ca/action-items/how-to-report-a-privacy-breach.aspx>.

PRIVACY AND YOUR EMPLOYER

There are unique rules that apply to employers when collecting, using and disclosing personal information. **The below rules are based on PIPA but PIPEDA will also apply in some situations and has some differences.**

PIPA defines “personal employee information” differently than “personal information”.

Personal employee information is any information reasonably required to establish, manage or terminate an employment or volunteer relationship.

This includes managing a post-employment or volunteer relationship. Employment also includes students, volunteers, agents, apprentices, officers and partners.

Accessing personal employee information is generally the same as accessing any other information under PIPA except that the organization may not request a fee for access to personal employee information.

COLLECTION, USE, And DISCLOSURE OF PERSONAL EMPLOYEE INFORMATION

Personal employee information may be collected, used or disclosed without consent if it is solely to establish, manage or terminate an employment or volunteer relationship, or to manage a post-employment or post-volunteer relationship.

The purpose of the collection must be reasonable, and current employees should be notified that information is going to be collected and the reasons for the collection.

There is one other situation where personal employee information can be disclosed. **Organizations may disclose information of current or former employees if the disclosure is to a potential or current employer.**

In this situation the **information must have been collected as personal employee information and the disclosure must be reasonable** for helping that employer determine whether the employee is suitable for a position with the employer.



EMPLOYEE SURVEILLANCE

The courts have created a test to determine when surveillance of the workplace is justified.



Under PIPA s 15(1) “An organization may collect personal employee information about an individual without the consent of the individual if (b) it is reasonable to collect the information for the particular purpose for which it is being collected”.

The key here is determining what reasonable means. To determine if the purpose is reasonable the courts look at three factors:

- 1 Are there legitimate issues that the organization needs to address through surveillance?**
- 2 Is the surveillance likely to be effective in addressing these issues?**
- 3 Was the surveillance conducted in a reasonable manner?**

This test applies no matter which privacy legislation is being used.

Under PIPA specifically, the employer must also have informed the employee in advance that collection of their personal information would occur, and the reason for this collection.

OTHER AREAS OF PRIVACY LAW



HEALTH

The Health Information Act applies to health information in Alberta, rather than PIPA or PIPEDA. It applies to information held by Alberta Health, Alberta Health Services, Covenant Health, physicians, pharmacists, registered nurses and dentists.

These people and organizations are known as custodians in the Act. HIA's goal is to protect personal information while still allowing for the information sharing required to provide health services.



Individuals may request access to their health information from the person in control of it. The person may require the request to be in writing using either a general form or one they provide.

A sample request form can be found here: <http://www.health.alberta.ca/documents/HIA-Request-Access-Form.pdf>. A \$25 charge may be charged for requesting access.

Like the other privacy acts **you may request a change be made to the information, and if your request is denied you may request a statement of disagreement be attached to the record**, explaining why you think the information is incorrect.



The collection and use of the information generally needs to be for providing a health-related service. To disclose your information, the custodian usually must get your written consent.

Exceptions however include disclosure to:

- another custodian, for the purpose of providing an individual with health services;
- any person, if the custodian reasonably believes disclosure will prevent the risk of harm to the health or safety of a minor, or an imminent danger to any person;
- to the police, if the information relates to a possible criminal offence and disclosure will protect the health and safety of Albertans.

To make a complaint regarding the collection, use or disclosure of an individual's health information, or any decision by a custodian under the HIA, go to <https://www.oipc.ab.ca/action-items/request-a-review-file-a-complaint.aspx>.

Employers and Health Information

Employers have restricted rights regarding what health information they can request from an employee.

Employers may only request information necessary to determine whether an employee can perform certain duties, or whether they need certain accommodation for medical disabilities.

As situations become more serious, the employer will be allowed to request more information. For instance, infrequent, short medical absences allow employers to ask for very little medical information, while long absences allow them to ask for more. **The amount of information required will depend on the facts of each specific case.**

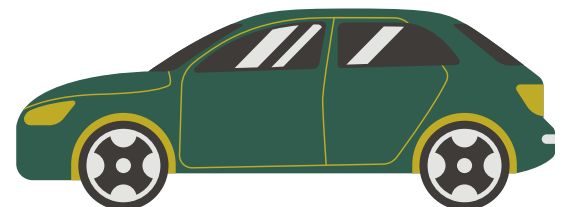


Generally, **employers are not entitled to a diagnosis or past medical information.** Employers usually can ask about the length of absence or disability, whether it will be temporary or permanent, and any work restrictions resulting from the medical issue.

MOTOR VEHICLES

To access any motor vehicle information that includes personal information, a request must be made complying with the Alberta Motor Vehicle Information Regulation.

Generally, the individual must provide their consent in writing for the information to be released.



There are a list of exceptions however, including: law enforcement, private investigation companies and the Insurance Crime Prevention Bureau.

There are also special rules regarding when a driver's abstract may be released. The abstract will be for a three-year period preceding the request, or it may be longer upon request.

Driver's abstracts may be released to:

- Insurers selling insurance;
- The Alberta Transportation Safety Board for reviews of an individual's driving ability;
- Peace officers;
- Officers and Registrars who need the information to do their job;
- Employers or prospective employers with written authorization from the individual;
- Parents or guardians if their signature is required to be on the individual's license;
- Lawyers of the individual with their written authorization.

In some situations the Registrar may require either oral, written or electronic consent to receive the abstract.

To make a request to access Motor Vehicle Information visit <http://www.servicealberta.gov.ab.ca/1123.cfm>.

WHO CAN I CALL FOR MORE HELP OR INFORMATION



FOIP HELP DESK

Web: <http://www.servicealberta.ca/foip/>
Ph: 780-427-5848
Email: foiphelpdesk@gov.ab.ca

The FOIP Help Desk provides information to organizations needing guidance and information regarding FOIP. For questions about your own personal information contact a FOIP Coordinator at the relevant public body using <http://servicealberta.ca/foip/find-a-foip-office.cfm>.

ACCESS AND PRIVACY SERVICES

Web: www.servicealberta.ca
Ph: 780-427-5848
Email: goa.foip-program@gov.ab.ca

For more information or questions about the Government of Alberta's FOIP or PIPA program and services.

Office of the Information and Privacy Commissioner of Alberta

Web: <https://www.oipc.ab.ca/>
Ph: 780-422-6860
Toll Free: 1-888-878-4044

#410, 9925 - 109 Street
Edmonton, Alberta, T5K 2J8

The Office of the Information and Privacy Commissioner of Alberta deals with PIPA, FOIP and HIA. The Office will look into complaints regarding an organization or public body failing to provide someone with their rights under these acts. They also provide guidance on how to make access and correction requests and they review decisions made as a result of these requests.

Office of the Information and Privacy Commissioner of Canada

Web: <https://www.priv.gc.ca/en>
Toll Free: 1-800-282-1376

30, Victoria Street
Gatineau, Quebec K1A 1H3

The Office of the Information and Privacy Commissioner of Canada deals with the Privacy Act and PIPEDA. It will investigate complaints under either of these acts, as well as provide guidance on how to make access and correction requests. It will also review decisions on requests by the federal government or federal works.

Data Access and Contract Management Unit (“DACMU”)

Service Alberta, Registry Services
3rd Floor John E. Brownlee Building
10365 - 97 Street
Edmonton, AB T5J 3W7

Web:
<http://www.servicealberta.gov.ab.ca/1123.cfm>

DACMU handles AMVIR applications. They review the application and inform individuals if more information is required.

Lawyer Referral Service

Toll Free Ph: 1-800-661-1095

The Lawyer Referral Services can connect you with a privacy lawyer. When you call, you will describe the nature of your problem to an operator who will then provide you with the contact information for up to three lawyers who may be able to assist you. When contacting these referred lawyers, make sure to let them know that you were given their information by the Lawyer Referral Service and the first half hour of consultation will be free.



NOTES
