

The background of the slide features a light blue gradient with a faint, semi-transparent image of classical architectural columns on the left side. The columns are white with detailed capitals and fluted shafts. The entire slide is framed by a thin brown border.

Learning Analytics in Med Ed Regulatory Perspective

September 14 2018

LEARNER DATA

1. HOW REGULATED?

2. WHAT CAN BE DONE WITH IT?

- 1. Collection, use and disclosure**
- 2. Notice**
- 3. Mandatory purposes**
- 4. Optional purposes**
- 5. Aggregated, deidentified data**
- 6. Research activities**

The background of the slide features a faint, blue-tinted image of classical architectural columns, possibly from a government building or courthouse, which adds a sense of formality and legal context to the privacy and security topics.

PRIVACY – SECURITY

Give people notice of what you will do...but only pedagogically or professionally necessary things.

Notice creates “reasonable expectations”

Follow your notices

Use strong security / good privacy practices

M/FIPPA COVERAGE (ONTARIO)

FIPPA covers ministries, most provincial agencies, boards, commissions, universities, hospitals, etc.

MFIPPA covers most municipal, local govt entities such as Police Services Boards, municipalities, local boards and health units

All provinces have privacy laws; You may need compliant data sharing agreement(s) check/confer

FIPPA

Freedom of Information and Protection of Privacy Act

Ont. law, covers hospitals & universities, provides for:

- 1. Access; requests for institutional records
&**
- 2. privacy; personal information protection**

PERSONAL INFORMATION IS...

INFORMATION ABOUT AN IDENTIFIABLE INDIVIDUAL,

including, but not limited to; ethnic origin, race, religion, age, sex, sexual orientation, education, financial, employment, medical, psychiatric, psychological or criminal information, identifying numbers; S.I.N., home address, home phone number, photos, videos, identifiable recordings of individual, name appearing with / revealing other personal information **etc.**

INFORMATION ABOUT STUDENTS IN PERSONAL CAPACITY

BUT NOT information about individuals acting in business or professional capacity - eg. name, position, routine work info – otherwise –if everything is personal– access is ineffective



FIPPA REGULATES PERSONAL INFORMATION:

- 1. COLLECTION,**
- 2. USE,**
- 3. DISCLOSURE,**
- 4. RETENTION, and**
- 5. DESTRUCTION**

COLLECTION

Three requirements:

1. Must have **legal authority** to collect,
2. Must **collect directly** from individual, and
3. Must provide **notice of collection**

COLLECTION: LEGAL AUTHORITY

Collection must be:

expressly authorized by statute or;

for purposes of law enforcement; or

necessary to proper administration of lawfully authorized activity

Otherwise, you **can't** collect personal information

DIRECT COLLECTION

Must collect personal information **directly from person** unless:

1. The person consents to indirect collection (from someone else)
2. Information collected for determining suitability for an honour/award
3. Information collected for law enforcement
4. Limited other reasons

NOTICE OF COLLECTION

Must provide notice of collection to individual, containing:

1. legal authority for the collection
2. principal purpose(s) for the personal information
3. title, address, phone no. of an official for questions

HOW (NOT) TO COLLECT PERSONAL INFORMATION



DRAFTING A NOTICE OF COLLECTION

consider possible future uses & disclosures
build in all reasonably anticipated purposes

Sample Notice:

The personal information on this form is collected under the authority of the *Environmental Assessment Act*, R.S.O. 1990, Chapter E.18, S. 7 and will be used in the development of a Class Environmental Assessment.

Questions regarding this collection should be directed to:
Position, address, telephone number

U OF T NOTICE OF COLLECTION

The University of Toronto respects your privacy.

Personal information that you provide to the University is collected pursuant to section 2(14) of the University of Toronto Act, 1971.

It is collected for the purpose of administering admissions, registration, academic programs, university-related student activities, activities of student societies, safety, financial assistance and awards, graduation and university advancement, and reporting to government.

In addition, the Ministry of Advanced Education and Skills Development has asked that we notify you of the following: The University of Toronto is required to disclose personal information such as Ontario Education Numbers, student characteristics and educational outcomes to the Minister of Advanced Education and Skills Development under s. 15 of the Ministry of Training, Colleges and Universities Act, R.S.O. 1990, Chapter M.19, as amended. **The ministry collects this data for purposes such as planning, allocating and administering public funding to colleges, universities and other post-secondary educational and training institutions and to conduct research and analysis, including longitudinal studies, and statistical activities conducted by or on behalf of the ministry for purposes that relate to post-secondary education and training.** Further information on how the Minister of Advanced Education and Skills Development uses this personal information is available on the ministry's website.

At all times it will be protected in accordance with the Freedom of Information and Protection of Privacy Act. If you have questions, please refer to www.utoronto.ca/privacy or contact the University Freedom of Information and Protection of Privacy Coordinator at McMurich Building, room 104, 12 Queen's Park Crescent West, Toronto, ON, M5S 1A8.

<http://www.acorn.utoronto.ca/fippa.php>

PURPOSE OF FIPPA NOTICE

INDIVIDUAL HAS FULL KNOWLEDGE OF WHAT WILL HAPPEN TO THEIR PERSONAL INFORMATION AND DECIDES WHETHER TO PARTICIPATE IN THE ACTIVITY/PROGRAM

Institution must notify of its purposes before it collects personal information.

Once notified of purposes, individual may accept or reject; activity, collection, purposes

Programs provide detailed up-front notice(s) of all personal information purposes

By entering the program, learners decide to accept the purposes in the notice(s)

The measure of an activity's consistency with the notice is "reasonable expectation"

TYPES OF PURPOSES ALLOWED

PURPOSES REQUIRED/PERMITTED BY LAW
or
LAWFULLY AUTHORIZED ACTIVITIES

Core institutional, pedagogical, and professional purposes;
teaching, evaluation, assessing and improving these activities

Professional requirements, practice standards, licensing,

NOT unrelated activities, such as purely commercial ones; advertising, marketing, etc.

CAN YOU GIVE NOTICE LATER?

INDIVIDUAL HAS FULL KNOWLEDGE OF WHAT WILL HAPPEN TO THEIR PERSONAL INFORMATION AND DECIDES WHETHER TO PARTICIPATE IN THE ACTIVITY/PROGRAM

Later notice (when the individual has committed to the program, for example) generally has to be clearly and actually optional.

Possible exceptions are legal/professional/regulatory requirements.

These should be considered individually.

New purposes should be optional for learners, since notice is happening late.

OPTIONAL PURPOSES

Individuals should be told when purposes are optional

The ability and method to opt-in or opt-out should be clearly explained

It is ok to explain the usefulness / value of the purpose

Also be clear:

NO official/institutional outcome will be affected by participation/refusal

THERE IS MORE LATITUDE FOR OPTIONAL PURPOSES

...But they should still relate in a material way to –or advance--
institutional / professional / pedagogical activities aims

OPTIONAL PURPOSES – One form

Consent for Student Information Release to Governing Bodies

Every year several governing bodies and affiliated hospitals ask us to report on clerkship core rotations and electives for each student.

This report directly relates to funding to the hospitals, by the Ministry of Health and Long-Term Care, as they are paid the number of days that a specific student has done a rotation or elective. The Ministry of Health and Long-Term Care requires the information to identify if the same student is being reported by another hospital in Ontario at the same time frame, to ensure there are no conflicts.

Information that is requested at any one time can be one or several of the following: name, date of birth, e-mail, student number, Medical Identification Number for Canada (MING), and expected date of graduation.

This information is being disclosed for a purpose consistent with the School's collection and use of that personal information, namely, for educational purposes.

WHAT ABOUT DEIDENTIFIED / AGGREGATED INFORMATION?

Your notice should let individuals know that a purpose is to deidentify, aggregate, etc... their personal information

Once the information has been (properly) deidentified, it is no longer protected by FIPPA, as it is no longer information about an identifiable individual

BEWARE possible reidentification, small cell issues, future analytics/tools

WHAT ABOUT RESEARCH?

Research is not covered by FIPPA (Ontario)

- 8.1) This Act does not apply,
- (a) to a record respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution;
- (b) to a record of teaching materials collected, prepared or maintained by an employee of an educational institution or by a person associated with an educational institution for use at the educational institution;
- (c) to a record respecting or associated with research, including clinical trials, conducted or proposed by an employee of a hospital or by a person associated with a hospital; or
- (d) to a record of teaching materials collected, prepared or maintained by an employee of a hospital or by a person associated with a hospital for use at the hospital. 2005, c. 28, Sched. F, s. 8 (2); 2010, c. 25, s. 24 (19).

Exception

- (9) Despite subsection (8.1), the head of the educational institution or hospital shall disclose the subject-matter and amount of funding being received with respect to the research referred to in that subsection. 2005, c. 28, Sched. F, s. 8 (2); 2010, c. 25, s. 24 (20).

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RESEARCH ETHICS

For research involving humans,

Generally need REB approval

Follow TCPS-2 requirements, including consent, privacy and confidentiality

http://www.pre.ethics.gc.ca/pdf/eng/tcps2/TCPS_2_FINAL_Web.pdf

HELP SET USEFUL PRIVACY LIMITS

ALWAYS ask:

What EXACTLY is the **activity** or function?

What EXACTLY are the **objectives** of the activity? -- make/get a COMPLETE list

Determine what **actions** are NECESSARY to achieve the objectives, then (and only then)

- Define and list EXHAUSTIVELY what PI is NECESSARY to accomplish the **actions**
- Check existing legal parameters; can you collect, use, disclose the PI?
- Even if you can legally collect, use, disclose etc., or are UNREGULATED:
 - can you do the task without PI?
 - if not, can you get away with less/partial information?
- Consider how well the activity can be delivered with more or less PI
- Consider financial impacts/benefits of having/using more or less PI
- How can you minimize/eliminate privacy risks?

Remember risks of having PI – breaches, data loss, ID theft, etc.

Consider impact on your client/employer of a breach or misuse of data;

For example, IPC/MTO arrangement re access to driver and vehicle license databases

http://www.ipc.on.ca/images/Resources/up-1num_25.pdf

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY OFFICE

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