



Checklist - Conditions for using Personal Information

In accordance with the Personal Information Protection Act 2016 (PIPA), every organisation must identify one or more conditions for using personal information in Bermuda.

It is integral that any condition(s) relied upon are specific to the organisation's use, along with meeting all other responsibilities, principles, and rules under PIPA.

Which condition of use applies to my use of personal information?

Checklist

One or more of the following conditions may apply to your use of personal information —

- (a) Consent:** We can reasonably demonstrate the individual has knowingly provided free consent. We have evaluated that the mechanism for consent is a clear, prominent, easily understandable, and accessible mechanism for an individual to give consent in relation to the use of their personal information, or we have identified an exception.
- (b) Reasonable Expectation:** We can demonstrate that a reasonable person considering the sensitivity of the personal information would not expect an individual to request that we not begin or cease the use of the personal information, and we have concluded that the use does not prejudice the rights of the individuals.
- (c) Contract:** We can demonstrate the use of personal information is necessary for the performance of a contract or for the taking of steps at the view to entering into a contract.
- (d) Legal Compliance:** We can demonstrate that the use of personal information is necessary in order to comply with a provision of law.
- (e) Publicly Available:** We can demonstrate that the personal information is publicly available, and the use is consistent with the purpose of its public availability.
- (f) Public task:** We can demonstrate that the use of personal information is necessary to perform a task carried out in the public interest or in the exercise of official authority vested in the organization or in a third party to whom the personal information is disclosed.
- (g) Employment:** We can demonstrate that the use of personal information is necessary in the context of an individual's present, past or potential employment.



Following are some scenarios regarding conditions of using personal information:

Scenario 1. (Consent)

A restaurant decides to provide free Wi-Fi to its customers. In order to access the Wi-Fi, the customer must provide their name, email address and mobile phone number and then agree to the restaurant's terms and conditions.

Within the terms and conditions, it states that by providing their contact details the customer is consenting to receive marketing communications from the restaurant. The restaurant is therefore making consent to send direct marketing a condition of accessing the service.

However, including direct marketing purposes within terms and conditions is not clear, prominent, and easily accessible (much less necessary for the provision of the Wi-Fi). This is not therefore valid consent.

Scenario 2. (Reasonable Expectation)

Individuals attend a youth sports seminar, and the organiser collects email addresses from some of the attendees and verbally states that the purpose is to inform them of upcoming tryouts for their children.

The organiser determines that they need contact information to coordinate the event. Since an email address is a directory data element, this is not sensitive personal information. .

Having considered purpose and necessity, the organiser then assesses that anyone who provided their email address would not reasonably be expected to then request that the email address is not used. To keep any risk of privacy harm low, the organiser sends the email addresses in the "BCC" line. To respect the individuals' ability to request that the use ceases, the organiser informs individuals how they can be removed from the distribution list. This would be a valid use of the reasonable expectation condition.

Scenario 3. (Employment)

A law enforcement unit requests potential candidates' names, dates of birth, email addresses, and telephone numbers, as part of the recruitment process.

The law enforcement unit determines that as part of assessing suitability of employment, it is requested that all potential candidates provide all previous addresses, maiden names (if applicable), and supporting evidence in order to request a police verification check.

Following the request, a potential candidate objects to the request and states that this request is an unfair use of his personal information. However, this is an example of a possible fair use of personal information in the context of the employment and could be deemed necessary given the nature of the role.