



Information Protection and Destruction:
Risk Management and
Compliance Fundamentals

Determining the Reasonableness of Information Destruction Measures in The Eyes of the Courts, Government and Public Opinion

by Robert Johnson
NAID-Canada



The Reasonableness Standard

Compliance *is not* Security

Compliance *is being* Reasonable



The Reasonableness Standard

What's Reasonable?

rea-son-a-ble (rē'zə-nə-bəl) adj.

1. Capable of reasoning; rational: *a reasonable person.*
2. Governed by or being in accordance with reason or sound thinking: *a reasonable solution to the problem.*
3. Being within the bounds of common sense: *arrive home at a reasonable hour.*
4. Not excessive or extreme; fair: *reasonable prices.*



The Reasonableness Standard

The Canadian privacy law builds on an express concept of “reasonableness.” This apparent flexibility, however, will not necessarily provide significant compliance benefits for covered organizations. Indeed, it may subject businesses to considerable uncertainty about what is required for compliance.

Source: *Stringent Canadian Privacy Law Takes Effect January 1, 2004*, Alan Charles Raul, Edward R. McNichols, and Jennifer Tatel of Sidley Austin Brown & Wood LLP, www.privacyassociation.org (IAPP).



What is Reasonable?

Determining Reasonableness. . .

What would a reasonable person think or do?

What are the available sources of direction?

What are the risks versus the consequence?



What is Reasonable?

How is the "reasonable person" test used in PIPEDA?

The purpose of this Part is to establish, in an era in which technology increasingly facilitates the circulation and exchange of information, rules to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information and the need of organizations to collect, use or disclose personal information for purposes that a **reasonable person** would consider appropriate in the circumstances.

Source: Section 3 of the Personal Information Protection and Electronic Document Act



What is Reasonable?

Standard for reasonableness in PIPA

Where in this Act anything or any matter

- (a) is described, characterized or referred to as reasonable or unreasonable, or
- (b) is required or directed to be carried out or otherwise dealt with reasonably or in a reasonable manner,

the standard to be applied under this Act in determining whether the thing or matter is reasonable or unreasonable, or has been carried out or otherwise dealt with reasonably or in a reasonable manner, is what a reasonable person would consider appropriate in the circumstances.

Source: Section 2 of Alberta's Personal Information Protection Act



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What is Reasonable?





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What is Reasonable?

L.A. STORY

UNREASONABLE

Total lack of regard by staff for the protection of personal information.

Ignored warning from whistleblower

Employees did not comply with the desires of management

Employed a less expensive option as a substitute for shredding.

Materials shipped intact to a foreign country.

MANAGEMENT WAS CONTINUALLY SHOWN TO BE UNAWARE OF WHAT WAS REALLY HAPPENING.



Sources of Direction?

SOURCES OF DIRECTION



Sources of Direction?

PIPEDA

Care shall be used in the disposal or destruction of personal information, to prevent unauthorized parties from gaining access to the information

Source: Section 4.7.5 of the Personal Information Protection and Electronic Document Act



Sources of Direction?

Freedom of Information and Protection of Privacy Act

Every head shall take all reasonable steps to ensure that when personal information is to be destroyed, it is destroyed in such a way that it cannot be reconstructed or retrieved.

Source: Section 5, R.R.O. 1990, REGULATION 459 of the DISPOSAL OF PERSONAL INFORMATION



Sources of Direction?

Medical records found scattered across Toronto streets: Commissioner Cavoukian issues first Order under new law

TORONTO – An investigation into how personal health records ended up being strewn across the streets of downtown Toronto on October 1 as a backdrop for a film production has resulted in a ruling by Information and Privacy Commissioner Ann Cavoukian that both a Toronto X-ray/ultrasound clinic and a paper disposal company had breached

The Commissioner, who was appalled at learning of this breach, went to the scene herself shortly after being advised of the records being scattered on the streets. “The Order I released today – the first under the new Act – should be carefully reviewed by every health information custodian and paper disposal company in



Sources of Direction?



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Ann Cavoukian, Ph.D.
Information and Privacy Commissioner/Ontario

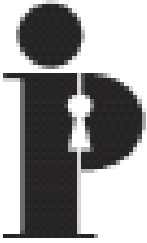
Fact Sheet

Secure Destruction of Personal Information

“The goal of record destruction is to have records containing any personal information permanently destroyed or erased in an irreversible manner that ensures that the record cannot be reconstructed in any way. Consider not only the “official” files but any duplicate copies of documents made for in-office use (documents could carry “shred after” dates or “do not copy” warnings).



Sources of Direction?



HO-001

The facts of this case demonstrate the critical need for the secure disposal of records containing personal health information. Industry standards make clear that secure disposal means permanently destroying the records by irreversible shredding or pulverizing, thus making them unreadable. Recycling can never be equated with secure disposal.

Source: Executive Order HO-001, issued by Ontario's Information and Privacy Commissioner's Office under its powers granted in PHIPA



Sources of Direction?

Packing Material Contains Crime Report Info

Company To Stop Using Vendor's Shredded Paper In Packages

POSTED: 6:13 pm EST December 18, 2006

UPDATED: 6:51 pm EST December 18, 2006

ANDOVER, Conn. -- A couple in Andover opened a box they were expecting and found everything one would need to steal someone's identity.

Channel 3 I-Team reporter Kara Sundlun reported the box contained shredded paper meant to protect the contents of the box.

John and Bernadette McBride ordered parts for their humidifier. Upon opening their order, the couple noticed that the shredded paper contained crime reports from a police department in Colorado, replete with names, dates of birth and Social Security numbers.

"I was appalled. You don't expect your personal information to be available like this, just haphazardly sent around," John McBride said.

The parts came from the Appliance Factory in Colorado. The owner told Eyewitness News he was shocked. He said his company got the paper from Waste Not Recycling, which is based in Colorado. Many companies use shredding services that sell the paper they pick up.

"I didn't realize that they were selling it for packing material. You would think it would be destroyed," Bernadette McBride said.

Instead, the information could destroy someone's credit, or even worse, put someone in danger. The Channel 3 I-Team found the names and addresses of crime victims, including a woman who was sexually assaulted.

The Appliance Factory told the I-Team that they looked around their warehouse and found more sensitive material about to go out with packaging material.

The company said they will quarantine all of its packaging material until further notice.



"I didn't realize that they were selling it for packing material. You would think it would be destroyed."

- **Bernadette McBride**

Received sensitive information in a package



Sources of Direction?



Unreasonable Hot Buttons

Not communicating, auditing or enforcing the destruction policies and procedures among employees

Accepting unreasonable risk for the sake of economics

Lack of care in the selecting and monitoring of service providers

Lacking a documented criteria for selecting and monitoring of service providers, including ongoing compliance

Inconsistency in the application of destruction policy

No contract or written agreement w/ service provider

Top management in the dark on program details



Final Word:

A perspective on the current and future risks
related to improper information destruction



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