

PRIVACY, CONFIDENTIALITY & CONSENT

BRIDGING[↑] the DISTANCE



Bridging the Distance
A joint project

Cambrian, Canadore, Confederation, Northern Colleges
...connecting our students

Privacy, Confidentiality & Consent



Presented by
TRAC Group Inc.
In partnership with
Student Success Services



Outline

- Privacy & Confidentiality
- Consent
- Privacy, Confidentiality & Consent in the College Setting
- Scenarios
- Test Your Knowledge



Governing Legislation

Freedom of Information and Protection of Privacy Act (FIPPA)

- Facilitates consistent and accountable access to information in public institutions
- Protects personal information from unauthorized collection, use, or disclosure by public institutions

Personal Information Protection and Electronic Documents Act (PIPEDA)

- Applied in 2000
- Promotes and supports electronic commerce by protecting personal information that is collected, used, or disclosed

Personal Health Information Protection Act (PHIPA)

- Comprises “Section A” of the *Health Information Protection Act, 2004*.
- Gives clients/patients the right to see their health records and make corrections if necessary



Legislation: FIPPA

Purposes

1. The purposes of this Act are,
 - (a) to provide a right of access to information under the control of institutions in accordance with the listed principles, and;
 - (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

“Personal Information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;



Legislation: FIPPA

Use of personal information

- 41. (1)** An institution shall not use personal information in its custody or under its control except,
- (a) where the person to whom the information relates has identified that information in particular and consented to its use;
 - (b) for the purpose for which it was obtained or compiled or for a consistent purpose;
 - (c) for a purpose for which the information may be disclosed to the institution under section 42 or under section 32 of the *Municipal Freedom of Information and Protection of Privacy Act*

Where disclosure permitted

- 42. (1)** An institution shall not disclose personal information in its custody or under its control except,
- (b) where the person to whom the information relates has identified that information in particular and consented to its disclosure;
 - (g) where disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
 - (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates.



Legislation: FIPPA

As employees of a community college, FIPPA requires that we:

- collect only the information needed to perform our mandated functions;
- use the information we collect only for the purpose for which it was collected;
- undertake not to disclose personal information other than to the individual to whom it relates (except in the limited circumstances specified by FIPPA); and
- inform people when we collect their personal information and make clear what we intend to do with the information.

This means that when we collect personal information, we must **state the purpose for collecting the information** and we **may *only* share the information required within the college *in order to do our respective jobs***.



Legislation: FIPPA

Protecting Personal Information from Unauthorized Access, Use, and Disclosure

- Avoid keeping personal information on removable storage devices (usb keys, laptops, handheld mobile devices) that are not encrypted.
- Paper documents (such as student papers) and data devices should be locked in the trunk, not left on the seat, and should never be left in a car overnight.
- When communicating with students by email, attempt to confirm their identity before disclosing personal information
- Ensure personal information that may be on your desk or on computer screens is not visible to visitors to your office. Keep sensitive personal information in a locked cabinet and log off your computer when you are not present.



Legislation: PHIPA

Purposes

1. The purposes of this Act are,

- (a) to establish rules for the collection, use and disclosure of personal health information about individuals that protect the confidentiality of that information and the privacy of individuals with respect to that information, while facilitating the effective provision of health care;
- (b) to provide individuals with a right of access to personal health information about themselves, subject to limited and specific exceptions set out in this Act;
- (c) to provide individuals with a right to require the correction or amendment of personal health information about themselves, subject to limited and specific exceptions set out in this Act.

Personal Health Information

4. (1) In this Act, “personal health information”, subject to subsections (3) and (4), means identifying information about an individual in oral or recorded form, if the information,

- (a) relates to the physical or mental health of the individual, including information that consists of the health history of the individual’s family,
- (b) relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual.

Legislation: PIPEDA vs PHIPA



What is the difference between PIPEDA (federal legislation) and PHIPA (provincial legislation)?

- A key difference between PIPEDA and PHIPA
 - **PIPEDA applies to organizations** that collect, use and disclose personal information in the course of commercial activities
 - **PHIPA applies to health information custodians** that collect, use and disclose personal health information, whether or not in the course of commercial activities.

Legislation: FIPPA and PHIPA



Emergency Situations

- Disclosure of personal information is permitted in "**compelling circumstances affecting the health or safety of an individual,**" and in "**compassionate circumstances, to facilitate contact with the spouse, or a close relative ... of an individual who is injured, ill or deceased.**"
- The appropriate responses in these circumstances are:
 - In urgent situations contact Security Services and advise the on-duty officer of the emergency;
 - In compelling but non-urgent situations, faculty and staff are encouraged to contact SSS and ask to speak to an advisor who can provide guidance to the faculty/staff member regarding the appropriate response to the situation.
- Examples regarding the safety of others include:
 - Explicit mention of a *plan* to hurt someone else
 - Explicit mention of a *wish* to hurt someone else

Consent: A History Lesson



Health Care Consent Act, 1996

Purposes

- 1.** The purposes of this Act are,
 - (a) to provide rules with respect to consent to treatment that apply consistently in all settings;
 - (b) to facilitate treatment, admission to care facilities, and personal assistance services, for persons lacking the capacity to make decisions about such matters;
 - (c) to enhance the autonomy of persons for whom treatment is proposed, persons for whom admission to a care facility is proposed and persons who are to receive personal assistance services
 - (d) to promote communication and understanding between health practitioners and their patients or clients;
 - (e) to ensure a significant role for supportive family members when a person lacks the capacity to make a decision about a treatment, admission to a care facility or a personal assistance service; &
 - (f) to permit intervention by the Public Guardian and Trustee only as a last resort in decisions on behalf of incapable persons concerning treatment, admission to a care facility or personal assistance services. 1996, c. 2, Sched. A, s. 1.



Consent: FIPPA

Personal privacy and Consent

21. (1) Refusal to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates



Consent: PHIPA

Elements of consent

18. (1) If this Act or any other Act requires the consent of an individual for the collection, use or disclosure of personal health information by a health information custodian, the consent,

- (a) must be a consent of the individual;
- (b) must be knowledgeable;
- (c) must relate to the information; and
- (d) must not be obtained through deception or coercion.

Knowledgeable consent

(5) A consent to the collection, use or disclosure of personal health information about an individual is knowledgeable if it is reasonable in the circumstances to believe that the individual knows,

- (a) the purposes of the collection, use or disclosure, as the case may be; and
- (b) that the individual may give or withhold consent.



Consent: PHIPA

Capacity to consent

21. (1) An individual is capable of consenting to the collection, use or disclosure of personal health information if the individual is able,

- (a) to understand the information that is relevant to deciding whether to consent to the collection, use or disclosure, as the case may be; and
- (b) to appreciate the reasonably foreseeable consequences of giving, not giving, withholding or withdrawing the consent.



Scenario 1: The Facts

A student contacts a Faculty member to advise he will not be in class this week, as he had attempted suicide the night before. The student indicates he went to the ER and was discharged with a referral for community resources.

The Faculty member suggests the student access *Student Success Services*; however, he declines at this time.

What do you do?



Scenario 1: Issues

Why is a Mental Health Advisor from *Student Success Services* unable to approach the student directly upon request from the Faculty member?

- *As the student has not provided the Faculty member with their explicit consent to release their information to SSS, the Faculty member cannot advise SSS of any personal information regarding the student. If the Faculty member were to do so, he/she would be in violation of both FIPPA and PHIPA.*
- *If the Faculty member has questions regarding how to proceed in this situation, he/she may contact SSS for general information regarding how best to monitor the student.*

Scenario 1: Dos and Don'ts



What to do in this situation as a Faculty or Staff Member

- If a student advises you of an issue or situation that you feel warrants further attention, you can suggest the student access *Student Success Services*.
- If the student declines and the situation is deemed “non-urgent,” continue to monitor the situation by checking in with the student, observing their overall presentation, gauging academic participation.
- If the situation is “urgent,” or becomes “urgent” at a later time, you may contact the SSS to obtain advice on how to handle the situation, or may call Security Services directly.

Scenario 1: Dos and Don'ts



What NOT to do as a Faculty or Staff Member

- Do NOT contact SSS and say “John X just told me he attempted suicide; you need to talk to him” – this is in violation of FIPPA and PHIPA
- You CANNOT force a person to access resources; you can continue to monitor the situation and encourage the student to access either community and on-campus resources – SSS can provide a list of resources
- Do NOT try to ‘fix’ the situation or counsel the student, unless you are trained to do so



Scenario 2: The Facts

You come across a student you do not know who is crying. She discloses a series of hardships and states she is feeling “overwhelmed and depressed.”

What do you do?

Scenario 2: Dos and Don'ts



What to do as a Faculty or Staff Member

- If you are comfortable, approach the student and ask if they are okay, and if they need assistance. If you are not comfortable approaching the student directly, please contact SSS to obtain further direction on how to handle the situation.
- Assess the situation: is the student in distress? Is the situation “urgent” or “non-urgent”?
- Encourage the student to access SSS; if you and the student are both comfortable, you may accompany the student to SSS; if the situation is “urgent,” contact Security Services or call 911.

Scenario 2: Dos and Don'ts



What to do as a Faculty or Staff Member: Remember

1. *It's OK to ask:* Provided you are coming from a place of concern, you are likely to get a good response; remember it is better to be embarrassed about the asking or about the response than be remorseful or regretful about not having asked
2. *Pick a good place and time to have the conversation:* If you are going to have a conversation, choose to do so when and where the barriers to opening up are fewest. Seek a quiet, private moment to talk to the student. If the student appears very agitated or if there is a safety concern, it is best to ask someone else to be present when you meet with the student.
3. *Say what you see:* Talk to the student about what you have seen and express concern (“I’ve noticed that you seem to be less interested in eating these days; is everything ok?”) Don’t make assumptions about the student’s behaviour or feelings.

Scenario 2: Dos and Don'ts



What to do as a Faculty or Staff Member: Remember

4. *Be prepared for the possibility of denial of difficulty:* Students (like the rest of us) are not always ready to talk about their concerns. If this happens, it means “not now”. Respect that.
5. *Trust your instincts:* Even if a student denies that there is a difficulty, keep on trusting yourself. You might say “OK, please know that I am concerned about the way that you seem these days”. Let them know that you are concerned and that you want to be of support.
6. *“Keep the door open”:* If at all possible, the student should leave the interaction feeling it is safe to approach you again in the future.
7. *Remember your resources:* If you are uncomfortable or uncertain after your interaction with a student, remember there are resources on campus that you can call on. In situations like these please call *Student Success Services*

Scenario 2: Dos and Don'ts



What NOT to do as a Faculty or Staff Member

- Do NOT minimize the situation (e.g., do NOT say, “I’m sure you’re fine,” “It can’t be that bad,” “Get over it,” etc.)
- Do NOT try to force the student to access services; you can suggest and encourage, but cannot use force; if the situation is deemed “urgent,” please contact Security Services.
- Please, do NOT ignore the situation



Scenario 3: The Facts

A student advises you that she requires academic accommodations due to a learning disability. You have not yet received a *Student Success Profile* from the student, and are concerned that the student is falling behind in her coursework.

What do you do?

Scenario 3: Dos and Don'ts



What to do as a Faculty Member

- The Faculty member is to approach the student to discuss her academic performance.
- Encourage the student to access SSS to obtain academic accommodations (SS Profile) if appropriate
- Students are required to self-identify special needs and must have the appropriate documentation to support accommodations
- A student may wish to disclose to you her personal, medical, or mental health information, at her own discretion



Summary

Important information for Faculty and Staff Members to take away from this presentation:

- As Faculty and Staff Members who may come into contact with personal information of students, it is your responsibility to be aware of the legislation that governs the collection, disclosure, and exchange of personal information;
- As Faculty, you are not considered “health care custodians,” however you do have a duty to protect any personal information you may receive regarding students;
- As a department of the College, *Student Success Services* is considered a “health care custodian” of personal medical health information, and must not disclose or exchange this information without the expressed consent of the student in question, and may only disclose information for a purpose that is relevant to the information;
- Students have a right to decline optional services such as those offered by *Student Success Services*, even though accessing these services may be to their benefit;
- At *Student Success Services*, it is our responsibility to adhere to the legislation put forth in FIPPA, PHIPA, and PIPEDA.



Test Your Knowledge

Question 1:

According to FIPPA, “personal information” includes:

- (a) Name
- (b) Address and Telephone Number
- (c) Email Address
- (d) Student Number
- (e) All of the above



Test Your Knowledge

Answer 1: (E) All of the above

According to FIPPA, “personal information” includes items such as a person’s name, contact information, and any identifying number (e.g. student number).

For the full list of items included as “personal information,” please refer to the slide on FIPPA Legislation.



Test Your Knowledge

Question 2:

As a Faculty Member, you have asked students in your class to provide their contact information (Name, Student Number, Email Address, and Phone Number) on a sign-up sheet if they are interested in joining a study group related to the class material. What should you do with the sign-up sheet after class?

- (a) Place it on your office desk so you do not lose it;
- (b) Store it in a file folder on your office shelf;
- (c) Store it in a file folder in your locked cabinet;
- (d) In your briefcase in the back seat of your car;
- (e) All of the above are sufficient.



Test Your Knowledge

Answer 2: (C) Store it in a file folder in your locked cabinet.

You are now in possession of personal and identifying information for a number of students, and must protect the personal information from unauthorized access, use, and disclosure. Simply leaving the document on your desk or shelf, even if your office door is locked, is not sufficient. As well, if you are keeping a document with personal information in a car, you must take precaution: keep the information locked in the trunk while you are transporting the document, and do not leave it in your car overnight.



Test Your Knowledge

Question 3:

A student has provided you with expressed written consent to disclose and exchange some of their personal information. To be certain that the student has the capacity to give consent, they need:

- (a) To understand why their consent is needed;
- (b) To understand the information that is relevant to making the decision of whether or not to provide their consent;
- (c) To understand the possible consequences of providing or not providing their consent;
- (d) All of the above.



Test Your Knowledge

Answer 3: (D) All of the above

An individual, according to FIPPA, PHIPA, and the Child and Family Services Act, is deemed to have capacity unless you have knowledge or information that would prove otherwise. A person is deemed capable of providing consent regarding the collection, use, or disclosure of their personal information if the individual is able to understand the information that is relevant to deciding whether to consent to the collection, use or disclosure, as the case may be; and is able to appreciate the reasonably foreseeable consequences of giving, not giving, withholding or withdrawing the consent.



Test Your Knowledge

Question 4:

As a Faculty or Staff Member you are faced with a student in distress, and you deem the situation “urgent.” What do you do first?

- (a) Go to your office and call Security Services;
- (b) Approach the student, identify yourself, and ask if they are okay or need assistance;
- (c) Do not add to the student’s problems by bothering them;
- (d) Contact Security Services and keep the student in sight, even though you did not feel comfortable approaching them directly;
- (e) Pull a student aside and ask them to attend to the student in distress.



Test Your Knowledge

Answer 4: (B) or (D)

If you come across a student in distress in an “urgent” situation, you may approach the student if you are comfortable doing so. Should you approach the student, identify yourself and ask if they require assistance. Advise that it is your responsibility to ensure they get assistance in this urgent situation, and stay with the student until Security Services arrives.

However, if you are not comfortable approaching the student directly, you should contact Security Services right away and stay where you can see the student. Stay on the scene until Security Services arrive and provide the officer with whatever information you can regarding the situation.

In either case, if you are unsure how to proceed, you may also contact *Student Success Services* to speak to an advisor.



Test Your Knowledge

Question 5:

Last term, a student in one of your classes self-identified with a Learning Disability. After the student accessed *Student Success Services*, they provided you with a list of accommodations she would require in your class. A colleague in the same Faculty now has this student in his class, and has asked you for a copy of the student's *Student Success Profile* so he may provide the same accommodations for the student. What do you do?

- (a) As the student did well in your class once she received the accommodations, and you want to ensure her continued success, you provide your colleague with a copy of the student's *Student Success Profile*;
- (b) You advise the student that their new professor would like a copy of the *Student Success Profile*, but that you have already told the professor what the accommodations should be;
- (c) You advise your colleague to contact *Student Success Services* for a copy of the student's accommodations;
- (d) You advise your colleague that students are encouraged to self-identify their needs, and it is the student's responsibility to provide a copy of the *Student Success Profile* to each professor;
- (e) All of the above.



Test Your Knowledge

Answer 5: (D)

As a Faculty member, it is commendable that you would want to ensure continued success for your students. However, in this situation you are not able to directly provide a copy of a student's *Student Success Profile*, a document containing personal information about a student, to any other Faculty or Staff Member, as this would be in direct violation of FIPPA legislation regarding the disclosure of personal information. As well, you are not able to verbally disclose the personal information to your colleague.

Also, your colleague is not able to contact *Student Success Services* to request a copy of the *Student Success Profile* for two reasons: SSS encourages students to self-identify any special needs they have, and any accommodations they require; take the opportunity to discuss the student's individual needs with his/her needs in relation to academic demands, and SSS would not have consent from the student to disclose the information directly to the Faculty member.

In this case, your colleague may discuss academic performance with the student, and encourage the student to provide their *Student Success Profile* for each class as required.

CERTIFICATION OF COMPLETION

BRIDGING
the DISTANCE



**Certification of Completion
AWARDED TO**

{NAME}

**Thank you for taking the time to review the Privacy,
Confidentiality, and Consent PowerPoint for Faculty and Staff
Members**

Awarded this _____ day of ___, 20_____



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