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Commission d'accès à l'information

Guidance on data portability

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Unofficial English translation of selected extracts by McCarthy Tétrault LLP¹

¹ The official French version can be found [here](#).

Obligations of enterprises

Communicating personal information in a technological format

The right to portability allows any person who requests it to obtain their computerized personal information in a structured and commonly used technological format. However, the personal information must have been collected from the person concerned. According to the [Quebec government's clarifications](#) (in French only), a format is “structured and commonly used” when commonly used software applications can easily recognize and extract the information contained therein.

Enterprises are required to ensure that any new project for the acquisition, development or overhaul of an information system or electronic service delivery system enables the communication of computerized personal information in a structured and commonly used technological format.

The purpose of this access right is to give individuals greater control over their personal information and to make it easier for them to obtain services from another enterprise.

In this context, a person may also request their computerized personal information be communicated in a structured and commonly used technological format to a person or an enterprise authorized to receive it. To ensure the protection of personal information, any enterprise that collects personal information, whether computerized or not, is required [to assess the necessity of receiving it by following the suggested procedure](#) (in French only).

There is currently no legislative requirement for businesses to have interoperable systems. However, interoperability is a crucial element in facilitating the efficient transfer of personal information and ensuring that individuals can fully benefit from the right to portability.

Conditions for the application of the right to portability

For the right to portability to apply, the personal information must be:

- **Computerized**
 - The right to portability is limited to computerized personal information, i.e. information that is organized and structured using information technology.
- **Collected from the individual**
 - Such computerized personal information **must also have been collected directly or indirectly from the individual by the enterprise**. Information collected indirectly includes information generated by the individual’s activities, such as purchase history, travel records, driving habits, etc.

Created or inferred information is excluded from the right to portability, because it was not collected directly or indirectly from the person concerned. Rather, such information is generated by analysis or observation, or obtained through algorithms and correlations. For instance, the level of risk associated with an individual by their insurance company constitutes personal information created or inferred.

Similarly, computerized personal information obtained by an enterprise from third parties is also excluded from the scope of the right to portability.

Procedure for accessing computerized personal information

The procedure for responding to an individual's request to obtain their computerized personal information in a structured and commonly used technological format is the same as for [any request for access or rectification](#) (in French only). Among other things, the deadline for responding to such a request is also 30 days.

A person who is dissatisfied with the response to their request may appeal to the Commission by filing a request for a review of the disagreement.

In addition, enterprises are required to take appropriate security measures when transmitting computerized personal information in a structured and commonly used technological format.

Serious practical difficulties

The communication of personal information in a structured and commonly used technological format should not give rise to serious practical difficulties for the enterprise. The *Act respecting the protection of personal information in the private sector* does not define “serious practical difficulties”. The Commission's jurisprudential interpretation of this expression refers to a case-by-case analysis. For instance, the Commission has already concluded that the significant costs incurred in complying with a request or the complexity involved in a transfer due to the plaintiff's choice of format, may be considered “serious practical difficulties”.

Rights of individuals

Requesting your personal information in a technological format

You may ask a public body or an enterprise to provide you with your computerized personal information in a structured and commonly used technological format. However, this information must have been collected from you. According to the [Quebec government's clarifications](#) (in French only), a format is said to be “structured and commonly used” when commonly used software applications can easily recognize and extract the information contained therein. This is what the *Act respecting access to documents held by public bodies and the protection of personal information* (“**Access Act**”) and the *Act respecting the protection of personal information in the private sector* (“**Private Sector Act**”) provide.

At your request, your information may also be provided, in the same format, to any person or body authorized to collect such information.

The purpose of this modality of the right of access to your personal information, also known as the **right to portability**, is to:

- **Give you more control over your personal information;**
- **Make it easier for you to obtain services from another public body or enterprise.**

Conditions for the right to portability to apply

For you to exercise your right to portability, the personal information must be:

- **Computerized**
 - The right to portability is limited to computerized personal information, i.e. information that is organized and structured using information technology.
- **Collected from you**
 - Your computerized personal information **must also have been collected directly or indirectly from you by a public body or an enterprise**. Indirectly collected information includes information generated by your activities, such as your purchase history, travel records, driving habits, etc.

Please note that created or inferred information is excluded from the right to portability, because it was not collected directly or indirectly from you. Rather, such information has been generated by analysis or observation, or obtained through algorithms and correlations. For instance, the level of risk associated with an individual by their insurance company constitutes personal information that is created or inferred.

Similarly, computerized personal information obtained by a public body or an enterprise from third parties is excluded from the scope of the right to portability.

How can you request access to your computerized personal information?

The procedure for exercising your right to portability is the same as for any request for access to your personal information.

- Learn how [to access your computerized personal information](#) (in French only)
- Know your [remedies in case of dissatisfaction](#) (in French only)

When you make a request to a public body or an enterprise to have your computerized personal information provided, the public body or enterprise must [assess the necessity of receiving it by following the suggested procedure](#) (in French only).

Serious practical difficulties

The communication of your personal information in a structured and commonly used technological format should not give rise to serious practical difficulties for the public body or the enterprise.

The Access Act and the Private Sector Act do not define “serious practical difficulties”. The Commission's jurisprudential interpretation of this expression refers to a case-by-case analysis. For instance, the Commission has already concluded that the significant costs incurred in complying with a request or the complexity involved in a transfer due to the plaintiff's choice of format, may be considered “serious practical difficulties”.