



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
*for British Columbia*

Protecting privacy. Promoting transparency.

---

## INVESTIGATION REPORT P18-01

# Always, sometimes, or never? Personal information & tenant screening

---

Drew McArthur  
Acting Information and Privacy Commissioner  
for British Columbia

March 22, 2018  
CanLII Cite: 2018 BCIPC 13  
Quicklaw Cite: [2018] B.C.I.P.C.D. No. 13

## TABLE OF CONTENTS

Commissioner’s message.....	2
Executive Summary.....	3
1.0 Background & methodology .....	4
2.0 Information currently collected by landlords .....	5
3.0 Applicable legislation .....	7
3.1 Personal Information Protection Act (PIPA).....	7
3.2 Other legislation .....	8
4.0 Application of PIPA to landlords .....	9
5.0 Issues.....	13
6.0 Issue 1: Collection of personal information.....	14
6.1 Always authorized .....	14
6.2 Sometimes authorized.....	17
6.3 (Almost) never authorized.....	21
6.4 Collection of personal information by not-for-profit housing .....	23
7.0 Issue 2: Retention of personal information .....	27
8.0 Tenant suitability algorithms .....	28
9.0 Summary of findings and recommendations.....	29
10.0 Conclusion .....	31
11.0 Acknowledgements.....	31

## COMMISSIONER'S MESSAGE

Some 1.5 million people live in rental housing in British Columbia, representing about 30% of all households. Vacancy rates are near zero and anyone looking for a place to rent in BC knows the challenge of finding accommodation.

This competitive market appears to motivate landlords to ask prospective tenants for sensitive personal information as justification for selecting the “best” tenant. My office receives calls every day from people worried about the over-collection of their personal information. During this investigation, I heard from tenants seeking luxury accommodation as well as basic housing. I heard from young people and from retirees, in urban and rural areas.

I found a systemic practice of landlords asking tenants to provide an unreasonable amount of personal information during the application process. Unfortunately, many people felt they had no choice but to provide that information to avoid missing out on a place to live, despite feeling uncomfortable doing so. Understandably, many tenants who reached out to me did not want to be identified or file a complaint, for fear of being blacklisted by landlords.

These factors combined with the imbalance of power between landlord and tenants led me to initiate this investigation into whether the collection of prospective tenants’ sensitive personal information by landlords is authorized by the *Personal Information Protection Act* (PIPA).

I know that landlords need good information to make the right decision to protect their assets, and that a bad tenant can be difficult to evict. PIPA recognizes their legitimate need to collect information, but also establishes clear boundaries that they must respect.

As a landlord, you are not looking for a best friend; you’re looking for a tenant. You cannot take advantage of the imbalance of power to require applicants to complete a behavioural questionnaire, or provide three months’ worth of bank statements. You cannot request information protected by the *Human Rights Code*. You also cannot inspect an applicant’s current residence or ask if an applicant may become pregnant in the next 12 months. These are just a few examples of the information landlords ask prospective tenants to provide.

I encourage landlords in BC to review this report and accompanying guidance document and improve their practices accordingly. I also encourage prospective tenants to read this report to understand their rights when seeking rental accommodation. My office will also follow up with the landlords in the investigation to ensure their practices are compliant with PIPA.

Drew McArthur  
Acting Information and Privacy Commissioner for BC  
March 22, 2018

## EXECUTIVE SUMMARY

This report is about the collection and retention of personal information by landlords in British Columbia. It makes nine findings about these activities and 13 recommendations to bring landlords into compliance with the *Personal Information Protection Act* (PIPA).

PIPA attempts to balance the right of individuals to protect their personal information and the need of organizations to collect, use or disclose personal information. It is primarily based on consent, with an overarching requirement for organizations to consider what a reasonable person would consider appropriate in the circumstances.

As part of the investigation, eight for-profit and five not-for profit landlords submitted their residential tenancy application forms and were asked to explain how that collection of personal information, and the subsequent use and retention of that information, is compliant with PIPA.

The report describes the personal information collected by landlords and sets out a tiered approach for when for-profit landlords can **always**, **sometimes**, and **never** collect personal information when assessing the suitability of a prospective tenant.

Landlords are **always** authorized to collect information that clearly relates to and is reasonable for the purpose of assessing prospective tenants, such as references and contact information. Consent is not required to collect personal information from publicly available sources prescribed by PIPA. However, landlords must notify applicants if they intend to consult these sources without the applicant's consent.

Personal information that can **sometimes** be collected includes a prospective tenant's age; proof of income/employment; and credit history information/credit score. The authority to collect this information depends on the context and whether the information that can always be collected is lacking or unavailable. For example, a landlord can ask for the age of a prospective tenant when the rental property is restricted to people over the age of 55. Credit checks can only be required when an applicant is unable to provide satisfactory references, or employment or income verification.

Finally, some personal information can (almost) **never** be collected as it is too sensitive or unrelated to the purpose of collection. This includes information protected under the *Human Rights Code*; whether the prospective tenant is a smoker; and information collected from internet search engines and social media platforms.

The investigation does not apply the always, sometimes, or never guidelines to not-for-profit landlords, as these organizations provide a special type of housing and an individual's suitability for tenancy will depend on the purpose and type of housing being offered. However, these organizations are limited to collecting only the personal information that is reasonable in the circumstances.

Finally, in terms of retention, the requirement is simple. Personal information collected under PIPA and used to make a decision that directly affects an individual must be retained for at least one year. This gives the individual the information is about an opportunity to access it. Once that period is over, landlords should securely destroy personal information if it is no longer necessary for a legal or business purpose.

## 1.0 BACKGROUND & METHODOLOGY

This investigation examines the personal information collected from prospective tenants by landlords in British Columbia. Landlords can collect some personal information from individuals to determine their suitability as a tenant, but there are limits on what they can ask for, and when. The *Personal Information Protection Act* (PIPA) applies to landlords and not-for-profit organizations that provide rental housing. Section 36(1)(a) authorizes me to initiate investigations to ensure that organizations are complying with PIPA.

Housing is big business in BC: In one estimate, residential tenancy generates a greater direct impact on GDP than the mining or forestry industries. There are over 500,000 rental households in BC, representing about 30% of all households.<sup>1</sup> And demand for rental property is increasing: within 10 years, another 100,000 units will be needed.<sup>2</sup> But vacancy rates in most of BC's urban areas are less than 1%;<sup>3</sup> the overall vacancy rate in BC is just 1.3%; and nationally, the urban centres with the lowest vacancy rates are all in BC. In Abbotsford-Mission and Kelowna vacancy is just 0.2%, followed by Victoria at 0.7% and Vancouver at 0.9%.

For this investigation I asked eight for-profit landlords and five not-for-profit landlords and rental management companies to provide:

1. A copy of their residential tenancy application for prospective tenants;
2. A description of how that personal information is used and stored;
3. The retention period for that personal information;
4. If any personal information is disclosed to any other person or organization, a list of the purposes for those disclosures; and
5. An explanation for how the collection, use, disclosure, and retention described in questions one to four is authorized by PIPA.

In addition to requesting information from landlords, I announced this investigation to the media, posted an announcement on our website, and mentioned it in speeches and presentations. Many tenants and landlords spoke with my staff informally, and often anonymously, about their concerns and experiences. I also looked at organizations that supply landlords with information about prospective tenants.

---

<sup>1</sup> According to the Canadian Rental Housing Index, available at <http://rentalhousingindex.ca/>.

<sup>2</sup> *Ibid.*

<sup>3</sup> According to the latest data from the Canadian Housing and Mortgage Corporation.

Tenancies where the tenant and the landlord share the use of any sleeping, bathroom or cooking facilities are outside of the scope of this report and were not considered.

My objective is to ensure that landlords understand their obligations under PIPA, and that any personal information they collect, use, or disclose is in compliance with that Act. This investigation is limited to what happens before a landlord agrees to rent a unit to a tenant, not what happens after a tenant signs a rental agreement.

## 2.0 INFORMATION CURRENTLY COLLECTED BY LANDLORDS

After reviewing the 13 application forms, the following is the list of every type of personal information that was requested or required in those forms:

### Information related to identity and vital statistics

- |   |   |   |
|---|---|---|
| <ul style="list-style-type: none"> <li>Name</li> <li>Proof of identity</li> <li>Age</li> <li>Birthdate</li> </ul> | <ul style="list-style-type: none"> <li>Contact information</li> <li>SIN</li> <li>Driver licence number</li> <li>Marital status</li> </ul> | <ul style="list-style-type: none"> <li>Name and number of two emergency contacts</li> <li>Whether the prospective tenant has a valid driver's licence</li> <li>Credit card information excluding expiry date</li> </ul> |
|---|---|---|

### Information related to suitability for tenancy

- Name and contact information for current/previous landlords
- Personal references
- Expected length of tenancy applied for
- Addresses of previous residences and how long the applicant lived there
- Reason for leaving previous tenancy
- Rent paid at previous tenancy
- Details of current and past employment (employer, salary, length of employment)
- Number of occupants who will live in the unit
- Whether the applicant has ever been evicted
- Whether the applicant has ever been convicted of a criminal offence
- Number of pets and their breed, height, and weight
- Whether the applicant has lived in a building with a bedbug or other pest problem
- Bank statements
- Authorization to collect a credit report
- Authorization to perform a criminal record check
- Whether the applicant had conflicts with previous neighbour tenants or building managers
- Federal tax assessments
- Whether the applicant has contents and third party liability insurance

Information unrelated to identity, vital statistics, or suitability for tenancy	
<ul style="list-style-type: none"> <li>• Ages of other occupants of the unit</li> <li>• Whether the applicant speaks English</li> <li>• Vehicle information</li> </ul>	<ul style="list-style-type: none"> <li>• Whether the applicant must give notice at their current accommodation</li> <li>• Detailed information about the size of current accommodation</li> <li>• Whether the prospective tenant is a smoker</li> <li>• Name of bank and how long the applicant has been a customer</li> <li>• Whether the intended occupants were born in Canada</li> </ul>

I found many invasive questions and errors on the application forms; including:

- One landlord incorrectly cited the *Freedom of Information and Protection of Privacy Act*, which applies to the public sector in BC, not the private sector.
- One landlord cited the “Personal Information Reporting Act” in its application form, which does not exist.
- Some landlords referenced the *Personal Information Protection and Electronics Documents Act* (PIPEDA). PIPEDA is the federal private sector privacy law and does not apply to landlords in BC.<sup>4</sup>
- One landlord said in its submission that the information requested in the application form is optional, but the form stated that “all applications must be filled out completely with all questions answered... or the application may be refused.”
- One application form asked if the number of occupants was expected to change in the next 12 months due to “pregnancy, family joining, family leaving, or child in care.”
- Many organizations’ submissions and forms did not address whether and for how long they retain personal information about unsuccessful applicants.
- All but one application form required prospective tenants to give a general consent for the landlord to collect personal information from any source.
- One application form requested the applicant to include a scan of government-issued ID.
- One application form asked for consent for the landlord to collect, use, and disclose personal information obtained in the past **and** future for the purpose of providing information to future landlords.
- One application asked if the other prospective occupants were born in Canada.
- One application form collects far more personal information than the landlord’s privacy policy states.
- Some application forms asked for marital status, sex, age, date of birth, and social insurance numbers of the applicant and co-applicant.

<sup>4</sup> For more information, see “Question and Answers regarding the application of PIPEDA, Alberta and British Columbia’s *Personal Information Protection Acts*” at [https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/legislation-related-to-pipeda/02\\_05\\_d\\_26/](https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/legislation-related-to-pipeda/02_05_d_26/).

I also received calls from individuals who reported several incidents that concerned me:

- One individual reported that a landlord insisted on seeing his T4 slips, even though he had already verified his income by providing a letter from his employer.
- One prospective tenant was asked for three months of detailed bank statements for all bank accounts.
- One person reported that they were asked to consent to an inspection of their current residence before their application would be approved.
- One person reported that they were asked for a copy of their child's report cards.
- One person was asked to provide a letter from their bank confirming how long they had been a customer.
- Many people asked my office whether a landlord could inquire about their immigration status.
- One person reported that the landlord demanded they consent to a credit check, even though they had offered to pay one year's rent in advance.

## 3.0 APPLICABLE LEGISLATION

### 3.1 PERSONAL INFORMATION PROTECTION ACT (PIPA)

All organizations in British Columbia must comply with PIPA when collecting, using, or disclosing personal information. PIPA defines an "organization" as a person (the *Interpretation Act* defines "person" as including a corporation, partnership or party), an unincorporated association, a trade union, a trust, or a not-for-profit organization.

PIPA applies to the collection of "personal information" by an organization. Section 1 of PIPA defines "personal information" as information about an identifiable individual. This means that information collected about an individual from internet searches, credit checks, references, and any other information about that individual is personal information. Personal information also includes anonymous information, if it can be combined with other information to identify an individual.

When any organization rents living space to an individual, they are subject to PIPA, whether that living space is a basement suite in their home or an apartment in a rental building. Any personal information collected, used, or disclosed to establish the tenancy must be authorized by PIPA.

## 3.2 OTHER LEGISLATION

Landlords are also subject to other provincial legislation in the course establishing, maintaining, or terminating a tenancy. Some of those laws affect the application of PIPA.

### *Business Practices and Consumer Protection Act (Business Practices Act)*

The [Business Practices Act](#) governs credit monitoring agencies and allows them to disclose the credit check of an individual applying for a tenancy to a landlord, with consent of the individual.

While the *Business Practices Act* authorizes a credit monitoring agency to **disclose** a credit check to a landlord, it does not provide authority for the landlord to **collect** that information. Collection by the landlord is governed by PIPA.

“Credit information” means information about an individual’s credit, and includes:		
Name	Age	Estimated income
Number of dependants	Educational and professional qualifications	Paying habits
Current and previous places of residence	Current and previous places of employment	Debts & assets
Marital status	Spouse’s name and age	Cost of living

### *Human Rights Code*

All of the organizations I spoke to as part of this investigation knew that BC has legislation that prevents landlords from discriminating against a prospective tenant on certain protected grounds. Section 10(1) of the [Human Rights Code](#) prohibits a landlord from refusing to rent to someone based on their:

Race	Colour	Ancestry
Place of origin	Religion	Marital status
Family status	Physical or mental disability	Sex
Gender identity or expression	Age	Sexual orientation
Lawful source of income		

There are some instances, listed under s. 10(2) of the *Human Rights Code*, where a landlord **can** discriminate. Examples include when a landlord is renting a unit in a building reserved exclusively for people over age 55<sup>5</sup>, or for people who have a physical or mental disability.

The *Human Rights Code* provides an exception for tenancies where the tenant and the landlord share the use of any sleeping, bathroom or cooking facilities, allowing landlords to discriminate

<sup>5</sup> or where at least one of the occupants is over 55.

in shared accommodation such as that. As noted above, that type of tenancy between roommates is outside of the scope of this report.

The protected grounds listed in the *Human Rights Code* inform my determination of what personal information may be collected under PIPA, as it would never be authorized for a landlord to collect personal information about a tenant for a purpose that would contravene the *Human Rights Code*.<sup>6</sup>

If a landlord collects personal information about a tenant in circumstances where the landlord is allowed by the *Human Rights Code* to discriminate, the collection may be authorized under PIPA.

### *Residential Tenancy Act*

BC's [Residential Tenancy Act](#) applies at the start of a tenancy but not before. That is why, of all the forms listed on the Residential Tenancy Branch website, there is no example of a rental application form.<sup>7</sup>

### *Manufactured Home Park Tenancy Act*

Like the *Residential Tenancy Act*, the [Manufactured Home Park Tenancy Act](#) applies to tenancy agreements, but it does not apply to the information a landlord collects about a tenant when deciding whether or not to rent to them.

## 4.0 APPLICATION OF PIPA TO LANDLORDS

PIPA recognizes both the right of individuals to protect their personal information and the legitimate need for organizations to collect, use and disclose personal information. PIPA limits the personal information that may be collected, used, or disclosed to that which a reasonable person would consider appropriate in the circumstances. In most cases PIPA also requires an organization to get consent before collecting, using, or disclosing personal information.

The reasonableness requirement applies when the collection of personal information is optional. However, when an organization **requires** the collection of certain information the threshold increases from reasonable to **necessary**. This means that an organization can only require an individual to provide information that is necessary for the provision of the product or service. Landlords can therefore collect some personal information to determine whether they want to rent to a prospective tenant, but can only require the minimum necessary to establish the tenancy.

---

<sup>6</sup> While a landlord may be able to demonstrate a valid reason to collect personal information about a protected ground from a prospective tenant, that uncommon situation would not apply to the standard practice of a for-profit landlord.

<sup>7</sup> <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/forms>

## Direct and indirect collection under PIPA

There are two ways a landlord can collect personal information about a prospective tenant. The first is to collect the information directly. For example, a landlord will often collect a prospective tenant's name and contact information directly from the tenant. The second way a landlord can collect information is indirectly. For example, a tenant may consent to a landlord collecting reference information about them from a previous landlord.

## Collection and consent

Section 6 of PIPA sets out this requirement for consent:

### Consent required

- 6 (1) An organization must not
  - (a) collect personal information about an individual,
  - (b) use personal information about an individual, or
  - (c) disclose personal information about an individual.
- (2) Subsection (1) does not apply if
  - (a) the individual gives consent to the collection, use or disclosure,
  - (b) this Act authorizes the collection, use or disclosure without the consent of the individual, or
  - (c) this Act deems the collection, use or disclosure to be consented to by the individual.

In some cases, PIPA authorizes a landlord to collect an individual's personal information without their consent, as discussed below.

## Requirements for valid consent

Section 7 of PIPA provides that, for consent to be valid, an organization must tell an individual, either verbally or in writing, why they are collecting their personal information **before** it is collected. The organization must also answer the individual's questions about the collection of the information.

## Consent and coercion

I heard from prospective tenants who felt they could not refuse to consent to the over-collection of their personal information because they feared losing the potential tenancy due to the very low vacancy rates across many parts of BC.

For consent to be valid it must be voluntary and informed. While a tenant would need to show evidence that a landlord coerced them to consent to the collection of their personal information before my office would determine that a prospective tenant's consent was not

valid,<sup>8</sup> in the context of the low vacancy rates faced by many tenants, some amount of coercion may be read into any application. However, in my view that coercion is not sufficient to render consent involuntary.

### Consent and necessity

Section 7(2) of PIPA states that an organization must not, as a condition of supplying a product or service, require an individual to consent to the collection, use, or disclosure of personal information beyond what is **necessary** to provide the product or service. Providing rental housing is a service. This means that a landlord cannot refuse to rent to someone because they refuse to provide personal information that is not necessary to assess their suitability as a tenant.

### Consent and deception

Section 7(3) of PIPA provides that, if an organization attempts to obtain consent for collecting, using, or disclosing personal information by providing false or misleading information or by using deceptive or misleading practices, then any consent an individual provides is not valid.

### Implicit consent

In most cases, prospective tenants give a landlord their express consent to collect their personal information, usually by signing an application form. Alternatively, in limited circumstances the prospective tenant can give implicit consent to the collection of their personal information. Section 8(1) of PIPA authorizes an organization to assume they have an individual's consent to collect their personal information if the purpose for collecting the personal information would be obvious to a reasonable person and the individual voluntarily provides the information.

### Withdrawing consent

Section 9(1) of PIPA authorizes individuals to withdraw their consent for an organization to collect, use or disclose their personal information. An organization cannot prohibit an individual from withdrawing their consent. If an individual withdraws their consent, an organization must inform the individual of what consequences are likely to result. For example, if a prospective tenant withdraws their consent for a landlord to consider their application for tenancy, then the landlord could refuse to rent to them.<sup>9</sup>

---

<sup>8</sup> For more information about the evidentiary threshold for consent, please see FIPPA Order F07-10 at paras. 84-85 (<http://canlii.ca/t/1scmh>).

<sup>9</sup> Under subsections 9(5) and 9(6) of PIPA, the two circumstances when an individual cannot withdraw their consent are when it would frustrate the performance of a legal obligation and when an individual has given consent for a credit reporting agency to collect and use their personal information for the purposes of creating a credit report.

## Collection without consent

As noted above, in some instances a landlord does not require consent to collect personal information about a prospective tenant. One of those is when the personal information is collected from a prescribed source of publicly available information.

This is frequently misunderstood to mean that any publicly available information may be collected without consent, but s. 6 of the *Personal Information Protection Act* Regulations limits what is considered “publicly available” to the following sources of information:

- subscriber information that appears in a telephone directory;
- personal information that appears in a professional or business directory, listing or notice that is available to the public; if the individual is permitted to refuse to have his or her personal information included in the directory;
- personal information appearing in a registry to which the public has a right of access, if the personal information is collected under the authority of an enactment, the laws of the government of Canada or a province or the bylaws of a municipality or other similar local authority in Canada; and
- personal information that appears in a printed or electronic publication that is available to the public, including a magazine, book or newspaper in printed or electronic form.

This is a narrow set of sources of publicly available personal information. It allows collection of personal information from a professional directory such as LinkedIn, a statutory registry such as the courthouse registry, or a printed or electronic publication such as a newspaper website.

An organization must notify an individual if it intends to use their name to search a prescribed source of publicly available personal information.

Social media sites such as Facebook, Twitter, and Instagram or search engines such as Google are not publicly available information under PIPA. Collection from these sources would have to be with consent **and** be reasonable under PIPA as discussed below.

## Reasonableness

Section 11 of PIPA authorizes an organization to collect personal information only for purposes that a reasonable person would consider appropriate in the circumstances. This requirement for reasonableness applies alongside all other authorities for collection of personal information. It means that consent will not be valid under PIPA if the purpose for collecting the personal information is not reasonable.

What constitutes reasonable and appropriate will vary according to the circumstance. Considerations include the sensitivity of the personal information requested, the purpose for collection, and the relevance or usefulness of the personal information for that purpose.

### Protection and retention of personal information

Section 34 of PIPA requires an organization to protect personal information in its custody or under its control by making reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, copying, modification, disposal or similar risks.

Section 35(1) of PIPA requires an organization to retain an individual's personal information for at least one year if they use that information to make a decision that directly affects the individual. This is to ensure that the individual has a reasonable opportunity to access the information.

Section 35(2) of PIPA requires an organization to destroy personal information when the purpose for which that personal information was collected is no longer being served, and retention is no longer necessary for a legal or business purpose. To comply with s. 34 of PIPA, organizations should ensure they destroy documents containing personal information in a secure manner, such as by shredding.

### Disclosure of personal information

PIPA authorizes an organization to disclose an individual's personal information with their consent. There are also several circumstances where PIPA authorizes an organization to disclose personal information without consent in reasonable circumstances. These are set out in s. 18 of PIPA.

For example, a landlord can disclose personal information necessary for law enforcement to investigate a matter, or information that is necessary to provide medical treatment to a tenant who cannot give consent.

## 5.0 ISSUES

The issues in this investigation are:

1. What personal information are private sector and not-for-profit landlords authorized under PIPA to collect when reviewing prospective tenants? As this is contextual, I describe each data element and explain whether a landlord can collect that data:
  - a. always;
  - b. sometimes; or
  - c. never.
2. How long are private sector landlords authorized or required to retain personal information collected from prospective tenants?

## 6.0 ISSUE 1: COLLECTION OF PERSONAL INFORMATION

I describe each data element private sector and not-for-profit landlords collect and explain whether they can collect that data:

- a. always;
- b. sometimes; or
- c. never.

### 6.1 ALWAYS AUTHORIZED

Landlords need to collect, use, and disclose some types of personal information to determine a prospective tenant's suitability for a tenancy. The collection of the following types of personal information will always be reasonable under s. 11 of PIPA, with the consent of the applicant.

The purpose for collection in a tenancy application is limited to what is reasonable to establish an applicant's suitability for a tenancy. In this respect PIPA encodes the Canadian Standards Association's privacy principle of limiting collection: "collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means."<sup>10</sup> The implication is that the collection of personal information must be limited to the minimal amount required to achieve the purpose of collection, and once that purpose is achieved further collection is not reasonable.

#### Nature of Consent

For consent to be valid, a landlord must tell an individual, either verbally or in writing, why they are collecting their personal information, before they collect it. The landlord must also answer the individual's questions about the collection of the information. Consent for collection must be specific and clearly describe the source(s) of collection. Blanket consent provisions do not satisfy the consent requirements in s. 10 of PIPA.

**Finding 1:** Nine of 13 landlords I investigated ask for general consent to collect personal information from any source they deemed necessary.

#### RECOMMENDATION 1

Landlords must state clear, specific purposes for the collection of personal information from prospective tenants. Landlords cannot include general consent provisions that purport to provide authority for **any** future collection, use, or disclosure of personal information.

<sup>10</sup> The CSA Model Code for the Protection of Personal Information was established in 1996.

## Name and proof of identity

It will always be reasonable for a landlord to collect a prospective tenant's name and to view proof of their identity. This is because a landlord must know who is applying and may take steps to confirm that the prospective tenant is who they say they are.

It is reasonable for a landlord to ask a prospective tenant to show them a copy of valid government-issued photo identification such as a driver's licence or passport. A landlord may view or examine the identification and then must return it to the prospective tenant. It is not reasonable for the landlord to make a copy of that identification or record unique numerical identifiers such as a driver's licence number or a passport number.

If the landlord is not satisfied with the identification provided then the landlord may request additional identification. The identification will either be satisfactory to authenticate the individual's identity or will not be; retaining a copy will not be more helpful to determine that the individual is who they say they are.

## Contact information

It will always be reasonable for a landlord to collect a prospective tenant's contact information such as phone number or email address.

## A reference from a previous landlord

It will always be reasonable for a landlord to seek consent from a tenant to collect reference information about a prospective tenant from that tenant's recent landlord. Information about an individual's actual history as a tenant is directly related to their suitability as a tenant and is therefore its most reliable predictor.

If a prospective tenant has satisfactory references from a recent landlord, and the previous tenancy was similar to the prospective tenancy, there is no further need to collect personal information to determine suitability for tenancy. For example, if the tenant's previous landlord is a professional landlord at arm's length from the tenant, and provides a reference stating that the tenant has always paid rent on time, caused no complaints from other tenants, and has taken good care of the property, a prospective landlord will not have any need for further personal information establishing suitability for tenancy.

If a landlord has reason to believe that the tenancy the prospective tenant is applying for is significantly different or more expensive than what they were previously renting, a landlord could ask a prospective tenant how much rent they paid to help the landlord decide whether a prospective tenant could afford the new rent.

If the landlord providing a reference did not rent to the applicant recently or for very long, it is reasonable for a landlord to collect references from more than one of the prospective tenant's previous landlords.

## Information about current and previous tenancies

If a prospective tenant has been a tenant before, it is reasonable to ask them where they rented and for how long. It is also reasonable to ask the tenant whether they have ever been evicted, or whether they left their previous tenancy because of a dispute with the landlord or because of issues with their neighbors or building managers. Gathering this information directly from the tenant is a reasonable way for the landlord to evaluate whether the information they receive from the prospective tenant's references is accurate.

## Pets

It will always be reasonable for a landlord to ask a prospective tenant if they have pets.

## Bedbugs/Infestations

It is always reasonable for a landlord to ask a prospective tenant if they are experiencing a bedbug infestation or any other infestation that would similarly harm the landlord's property.

## A tenant report from a reporting agency

Some credit reporting agencies also provide tenancy reports that only describe a tenant's rent payment history and other tenancy information. If a reporting agency offers a product to landlords that only includes information about a tenant's name, place of residence, previous places of residence, and their paying habits in relation to those places of residence, but not credit history, then a landlord would always be authorized to collect this information. This type of report is not the same as a credit history report, which is discussed later and is generally not authorized to be collected by a landlord.

## Publicly available decisions about residential tenancy disputes

Administrative tribunals under residential tenancy legislation such as the Residential Tenancy Branch of British Columbia<sup>11</sup> and similar legislation in Ontario<sup>12</sup>, post decisions made by those tribunals online. Many jurisdictions outside of Canada, like the United Kingdom, also maintain similar online databases.<sup>13</sup> While these decisions typically either do not identify a tenant by name or do not allow searching by name, if a landlord is able to identify a tenant it would be reasonable to collect this personal information about the tenant. Similar to a tenant verification report or a reference, these decisions contain information related to a tenancy.

As with other sources of publicly available information, a landlord must notify a prospective tenant from which publicly available sources it intends to use the tenant's name to collect personal information, and the purpose for collection, before collecting it.

---

<sup>11</sup> <http://www.housing.gov.bc.ca/rtb/search.html>.

<sup>12</sup> <https://www.canlii.org/en/on/onltb/>.

<sup>13</sup> [http://www.residential-property.judiciary.gov.uk/search/decision\\_search.jsp](http://www.residential-property.judiciary.gov.uk/search/decision_search.jsp)

Although a landlord cannot know before they search for information about a prospective tenant whether the search will return any results, they must notify them that they are going to use their personal information to search a publicly available source as prescribed by PIPA.

### Electronic Court Files on Court Services Online

The BC Ministry of Justice has an electronic court registry that includes electronic search functions for civil and criminal court records through Court Services Online.<sup>14</sup> Because court records contain personal information that is publicly available as prescribed by PIPA, a landlord does not need an individual's consent to collect this information.<sup>15</sup> As with the Residential Tenancy Branch decisions, a landlord is required to disclose to a prospective tenant that it will be collecting their information for the purposes of searching Court Services Online.

### Criminal History

Unlike age or family status, criminal conviction history is a personal characteristic under the *Human Rights Code* that is not protected in relation to housing.<sup>16</sup> If a landlord decides to ask for a prospective tenant's criminal history, they must tell the prospective tenant the purposes for which they are requesting that information, and those purposes must be reasonable.

**Finding 2:** The types of personal information listed in this “always authorized” section are the only types that may always be required of every applicant. However, 12 of 13 landlords investigated require that every applicant provide more than these types of personal information.

#### RECOMMENDATION 2

The only types of personal information that may be required of every prospective tenant are those listed in this “always authorized” section. If a landlord chooses to use a one-size-fits-all application form then it must not require more personal information than listed in this section.

## 6.2 SOMETIMES AUTHORIZED

The personal information listed in this section may sometimes be collected by a landlord, depending on the usefulness of the information collected in the previous section, and the circumstances of the prospective tenant.

<sup>14</sup> <https://justice.gov.bc.ca/cso/index.do>

<sup>15</sup> See s. 12(1)(e)

<sup>16</sup> <http://www.bchrt.bc.ca/human-rights-duties/characteristics.htm>.

Whether it is reasonable to collect personal information varies based on the sensitivity of the personal information, the amount of personal information, and the usefulness of that personal information to evaluate suitability for a tenancy. The personal information listed in this section may only sometimes be collected because it is either more sensitive than the personal information in the previous section, or is less related to evaluating suitability for a tenancy.

If a prospective tenant lacks the type of reference information discussed in the previous section, it is reasonable for a landlord to collect other information, such as their income and employment, or their credit history. However, a landlord should not require credit history unless the prospective tenant's employment and other income information is inadequate.

Therefore, collecting the following types of personal information is only authorized if a prospective tenant is unable to provide satisfactory references for a similar tenancy, or if the landlord has reason to believe that circumstances have changed for the tenant such that the reference is no longer sufficient. For example, if the previous tenancy was for substantially lower rent, or the tenant was one of several roommates, then additional information may be collected.

### Age

Age is a protected ground under the *Human Rights Code*; under that Code a landlord can restrict rentals to people 55 and older in an all seniors building, or in a building where at least one of the occupants must be at least 55, but any other age discrimination is not permitted.<sup>17</sup> If the tenancy is not limited to individuals over 55 or individuals occupying a unit with an individual who is over 55, then the landlord could not make use of information about a prospective tenant's age without contravening the *Human Rights Code*, unless the landlord can prove they had a valid reason in the circumstances for collecting it, in accordance with human rights law decisions.

### Proof of income/employment

Information about an individual's employment and income such as place and hours of work, wages, bank statements or tax assessments are sensitive personal information. It is reasonable for a landlord to collect personal information from a prospective tenant about proof of income or employment to establish that the tenant can pay rent. However, landlords cannot require this information if they have already collected enough personal information about a prospective tenant's history of paying rent. In addition, a landlord should limit questions about employment to a prospective tenant's current employment.

---

<sup>17</sup> Section 1 of the *Human Rights Code* says that "age" means 19 years or older. This would allow a landlord to ensure that an applicant is an adult and capable of entering into a contract.

Where appropriate, a landlord may request one of the following:

- Recent pay stubs;
- A letter from an employer, or permission from the prospective tenant to call the employer to ask how much they pay the prospective tenant;
- Income tax assessments; or
- Bank statements demonstrating regular automated payroll deposits.

Where a bank statement is requested, all other withdrawal and balance information may be redacted by the prospective tenant. Where an income tax assessment is requested all information other than taxable income may be redacted by the tenant.

### Credit history information/credit score

A credit check is intended to evaluate an individual's ability to enter into a credit relationship where the individual is using a product or service prior to paying for that product or service. Tenants are not in a credit relationship with their landlord, in that they pay for the tenancy **before** receiving it (most rentals pay one month in advance). Nevertheless, 10 of the rental application forms I reviewed asked prospective tenants to consent to a credit check.

The *Business Practices Act* sets out the credit information that may be disclosed by a credit reporting agency to a landlord. Credit information<sup>18</sup> may include information about an individual's debt payment history as well as their rent payment history.

While the *Business Practices Act* authorizes a reporting agency to disclose personal information to a landlord with consent, it does not authorize the landlord to collect that information. That collection must be authorized by PIPA, with consent of the prospective tenant, and be reasonable for the purpose of evaluating suitability for a tenancy.

Assessing the reasonableness of a landlord's request to a prospective tenant to perform a credit check requires consideration of the large volume of sensitive personal information available from a credit check. The information in a credit check may include personal information that has nothing to do with suitability for a tenancy, some of which could not be acted on without contravening the *Human Rights Code*, including age, marital status, spouse's age, and number of dependants.

Because of the high volume of personal information disclosed in a credit report, and its low relevancy in determining tenant suitability, a landlord is only authorized to request consent for a credit check where a tenant is not able to provide satisfactory references, or employment and income verification. While it is reasonable to collect a prospective tenant's credit history in these circumstances, it will not be necessary for most tenants, and a landlord cannot require every applicant to consent to a credit check.

---

<sup>18</sup> under Part 3 of the *Business Practices Act*.

If a landlord is authorized to conduct a credit check it is reasonable for the landlord to collect the prospective tenant's birthdate and/or social insurance number for the purposes of identifying them to the reporting agency.

This is the only circumstance where a landlord is authorized to collect a tenant's social insurance number and birthdate. While a social insurance number facilitates a credit check, it is not necessary, and tenants may choose to only provide birthdate. Landlords cannot collect social insurance numbers or birthdates from all prospective tenants, only those that do not have satisfactory references or employment income verification.

**Finding 3:** Ten of 13 landlords require credit checks from all prospective tenants, which is not reasonable under PIPA.

### RECOMMENDATION 3

Landlords should only require a prospective tenant to consent to a credit check, and provide information to allow the landlord to perform a credit check, when the prospective tenant cannot provide sufficient references about previous tenancies or satisfactory employment and income verification.

### RECOMMENDATION 4

Many credit reporting agencies only offer "all or nothing" reports. Credit reporting agencies should offer reports to landlords that limit the personal information being disclosed to that which relates to suitability for a tenancy.

### RECOMMENDATION 5

Landlords should explicitly state whether the credit report they collect could lower the prospective tenant's credit score. They must also state on the form which credit reporting agencies are providing the information.

### 6.3 (ALMOST) NEVER AUTHORIZED

---

A landlord will **almost never** be authorized to collect the personal information listed in this section from a prospective tenant. This personal information is either too unrelated to determining suitability or too sensitive to be reasonable for a landlord to collect prior to choosing a tenant.

While there will nevertheless be special situations where collection of this personal information will be authorized, such as in supportive housing for persons with disabilities, most landlords will not be allowed to collect any of the personal information listed in this section, and it should not be requested on standard application forms.

#### Information related to a protected ground under the *Human Rights Code*

I reviewed applications that requested information about marital status, proficiency in English, number and age of children, and information about the ages of the other intended occupants. This information is unrelated to an individual's suitability as a tenant and a landlord could generally not make a tenancy decision based on this information without being in contravention of the *Human Rights Code*.

If collection of personal information would lead to a contravention of another provincial law, such as the *Human Rights Code*, it will not be reasonable under PIPA. Other than instances of not-for-profit housing discussed in the next section, a prospective landlord is not authorized to collect personal information related to a protected ground under the *Human Rights Code*.

**Finding 4:** Ten of 13 landlords in this investigation collect information that, if used, would contravene the *Human Rights Code* as well as PIPA.

#### RECOMMENDATION 6

Landlords should revise application forms to ensure they do not collect information that, if used, would contravene the *Human Rights Code*.

#### Whether the prospective tenant is a smoker

It is not reasonable for a landlord to ask a prospective tenant if they smoke tobacco or cannabis. Whether a prospective tenant is a smoker is not an indication of whether they will break a non-smoking condition of a tenancy. In a reference check the landlord may ask a previous landlord whether the tenant smoked on the property. The landlord does not need to know to what extent a prospective tenant may smoke away from the property, and there are ways for a landlord to restrict smoking on the rental premises when completing the lease agreement.

## Information retrieved from internet search engines and social media platforms

During this investigation, I learned that some landlords perform internet searches for information about prospective tenants. Previous orders issued by my office have determined that viewing personal information is the same as collecting it.<sup>19</sup> As discussed above, the only sources of publicly available information which may be searched without the consent of a prospective tenant are telephone and professional or business directories, public registries authorized by provincial, federal, or municipal statutes, and online publications such as newspapers or magazines.

Internet search engines and social media websites are not included in that group and cannot be searched without consent. Further, the personal information in those and similar sources can include information about a prospective tenant's friends, family, hobbies, or political affiliations, or other sensitive personal information, and is not sufficiently related to the purpose of determining an individual's suitability as a tenant for its collection to be reasonable. Therefore, the viewing of personal information about a prospective tenant on internet search engines or social media platforms, even with consent, is **not** reasonable under PIPA.<sup>20</sup>

Many of the privacy challenges landlords face with tenant screening are the same challenges employers face when screening employees. For that reason, landlords should consult my office's guidance on "[Conducting Social Media Background Checks](#)" for more information.<sup>21</sup>

**Finding 5:** Many landlords collect personal information from social media and other internet sources, in contravention of PIPA.

### RECOMMENDATION 7

Landlords must not collect information about prospective tenants from social media platforms or internet search engines other than those few sources of publicly available information prescribed by PIPA.

## Application forms versus tenancy agreements

Like a job competition, in many cases, a landlord will collect information from several prospective tenants for the purposes of establishing to whom the landlord will choose to rent. A landlord must not collect more information on the application form than is necessary to select a tenant. Once a landlord selects a tenant, they can collect additional personal information that is reasonable or necessary to establish the tenancy.

<sup>19</sup> See Order P10-01 Host International of Canada Ltd. <<http://canlii.ca/t/280d2>>

<sup>20</sup> There are situations where PIPA authorizes the collection of information from these sources without consent, such as in an emergency.

<sup>21</sup> <https://www.oipc.bc.ca/guidance-documents/1454>

For example, a landlord cannot collect a prospective tenant's emergency contacts on an application form, but may collect that information in a tenancy agreement. Similarly, some application forms requested vehicle information from prospective tenants. After a landlord agrees to rent to a tenant it can collect information about whether the tenant has a vehicle and information about that vehicle to manage the parking, but not before.

**Finding 6:** Eight of 13 landlords collect personal information that is only reasonable to collect after a tenancy has been established.

#### RECOMMENDATION 8

Landlords should only collect information for managing a tenancy after a tenant accepts the tenancy. Any information collected on an application form about a prospective tenant must be limited to determining suitability for a tenancy.

## 6.4 COLLECTION OF PERSONAL INFORMATION BY NOT-FOR-PROFIT HOUSING

The application forms I reviewed from not-for-profit housing providers were different in many ways from application forms from for-profit property managers.<sup>22</sup> The following requests for personal information were only observed on not-for-profit housing applications:

#### Information related to personal identity

- Personal essay describing hobbies, training, health care needs, etc.
- Whether the applicants were born in Canada;
- Type of aboriginal identity (First Nations, Metis, Inuit, other)

<sup>22</sup> Some not-for-profit organizations do not have their own application for tenancy forms. Instead, they select tenants directly from the housing registry maintained by BC Housing. The collection of information by BC Housing is subject to the *Freedom of Information and Protection of Privacy Act*. That application form, and the process by which not-for-profit organizations access that information, is outside the scope of this report.

### Information related to financial need

- Consent to check for all income supplements the applicant receives from the provincial or federal government
- Details about all debts owing from previous tenancies
- The amount of the applicant's current average utility bill
- A list of all income sources for all adults who will occupy the unit
- A list of all cash and assets held by adults who will occupy the unit
- Copies of proof of income and assets of each adult who will occupy the unit

### Information related to occupants and housing needs

- Whether the applicant speaks English
- Detailed information about the size of current accommodation
- Medical questionnaire completed by doctor
- Whether parking/scooter parking/storage locker requested
- Suite size preference and/or building preference
- Relationship of co-applicants to primary applicant
- Whether co-applicants currently live full time with main applicant
- Information about who lives with them part time and why
- Whether the applicant anticipates the number of unit occupants to change in the next year
- Previous subsidized housing names and details
- Reason why the applicant wants housing from that housing provider
- Applicant to provide information about any health and mobility issues
- Applicant's BC Housing registry number
- Whether any of the individuals to occupy the unit have disabilities that require special housing
- Request for an unscheduled home visit by the prospective landlord

### Information unrelated to eligibility for not-for-profit housing

- Information about any illnesses any prospective tenants may have

Not-for-profit housing providers can collect more personal information than for-profit housing providers:

The *Human Rights Code* allows some not-for-profit housing providers to select an applicant based on personal information that would otherwise be protected grounds. Therefore, in order to evaluate whether a not-for-profit organization is allowed to collect an application's personal information always, sometimes, or never, it is necessary to determine whether the special type of housing a not-for-profit organization is offering requires that organization to collect

information that would normally fall within the “never” category of collection because it would violate the *Human Rights Code* or be otherwise unrelated to a tenancy.

For this reason, I did not evaluate not-for-profit housing requests for personal information using the always, sometimes, or never categories. It depends on what kind of housing the not-for-profit is offering and why. Not-for-profits still ask for many of the same types of personal information that for-profit housing providers do, and with respect to those questions, not-for-profits should follow the always, sometimes and never categories set out in this report.

Section 41(1) of the *Human Rights Code* exempts not-for-profit housing providers from legal prohibitions against granting preferences to members of certain identifiable groups or classes of persons based on a protected personal characteristic. To fall within the exemption, the not-for-profit housing provider must act in good faith when it grants the preference, and the preference must be rationally connected to a primary purpose of promoting the interests of the group or class of persons. It may be necessary for the not-for-profit housing provider to collect information to determine if an applicant is a member of the identifiable group or class.<sup>23</sup>

Section 41 is as follows:

41 (1) If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, sexual orientation, gender identity or expression, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.

As long as the not-for-profit organization’s tenant screening process did not extend beyond this exemption in s. 41 of the *Human Rights Code*, the collection of that information would be authorized by PIPA. If an applicant believes a not-for-profit organization asked them to provide information beyond what was necessary to determine their suitability for a tenancy, they may nevertheless complain to my office.

### Legislated defences to discrimination verses the not-for-profit exemption

Not-for-profit organizations should recognize that there are only two ways that a landlord can legally draw a distinction based on an applicant’s personal characteristics. The first applies to all landlords, whether not-for-profit or for-profit. Those defences are set out in s. 10(2) of the *Human Rights Code* and in the decisions of the BC Human Rights Tribunal. The defences in s. 10(2) are very limited and include certain types of shared housing, housing reserved for individuals who are over 55, and reserved for individuals who have a mental or physical disability. In addition to these defences which are available to all landlords, not-for-profit landlords may also give a preference to certain people in accordance with s. 41.

---

<sup>23</sup> <http://www.bchrt.bc.ca/human-rights-duties/non-profit.htm>

Not-for-profit housing providers are nevertheless limited to collecting only that personal information that is reasonable to screen the applicant. For example, a not-for-profit organization that provides housing for individuals of a particular ancestry should only require the minimum amount of personal information needed to satisfy themselves that the applicant is of that ancestry.

Finally, I note that some not-for-profits included in this investigation were confused about whether they are subject to PIPA or the *Freedom of Information and Protection of Privacy Act* (FIPPA), which applies to the public sector in BC. This confusion may be because much of the funding for the not-for-profit sector comes from public bodies such as BC Housing.

My office is working with those not-for-profits to clarify the application of PIPA and FIPPA, but for others I offer the following simple advice: if some or all of your funding for housing comes from a public body under FIPPA, then you are likely subject to FIPPA in the collection, use, or disclosure of personal information necessary to provide that housing. You should work with that public body to ensure you are compliant with FIPPA, or contact my office to determine your responsibilities under that Act.

**Finding 7:** Not-for-profit landlords may collect personal information from prospective tenants about protected grounds under the *Human Rights Code* where the not-for-profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by that protected ground. In all other respects the always, sometimes, never categories described above also apply to not-for-profit landlords.

#### RECOMMENDATION 9

Not-for-profit landlords should review their application process to ensure that all of the personal information they collect is either a permitted defence to discrimination or falls within the scope of the exemption in s. 41(1) of the *Human Rights Code*. Next, they should ensure that they are not collecting personal information that exceeds what is necessary for the organization to determine if the applicant is eligible for tenancy.

**Finding 8:** Many not-for-profit landlords are confused about whether PIPA or FIPPA applies to their collection, use or disclosure of personal information.

#### RECOMMENDATION 10

Not-for-profit landlords who are funded by a public body should work with my office and the public body to determine their responsibilities under PIPA or FIPPA.

## 7.0 ISSUE 2: RETENTION OF PERSONAL INFORMATION

How long are private sector landlords authorized or required to retain personal information collected from prospective tenants?

PIPA applies to the retention of personal information collected by landlords from prospective tenants. Section 35(1) requires an organization to keep an individual's personal information for at least one year if they use that information to make a decision that directly affects the individual. A decision whether or not to rent to a prospective tenant is a decision that directly affects that individual. This means that landlords **must** retain the personal information of all prospective tenants for one year after the decision is made. Section 35(2) of PIPA further requires an organization to destroy personal information when the information is no longer necessary for a legal or business purpose.

Six of the landlords I included in this investigation destroy the personal information of prospective tenants immediately after making the tenancy decision.

**Finding 9:** Six of 13 landlords in this investigation do not keep unsuccessful applications for at least one year as required by PIPA.

### RECOMMENDATION 11

Landlords should implement a retention policy for personal information, ensuring that personal information collected is retained for one year and then deleted as soon as it is no longer necessary for a legal or business purpose.

### RECOMMENDATION 12

Landlords should include or summarize the retention policy on their application forms.

## 8.0 TENANT SUITABILITY ALGORITHMS

During this investigation my office became aware of a new service available to landlords. These services collect a variety of information about a prospective tenant, process that data within an algorithm, and provide the landlord with a tenant suitability report.

These services collect personal information about a prospective tenant from multiple internet sources, including social media platforms and other online sources that, as described above, a landlord is not authorized to search for tenant personal information. In addition, I understand that some of these organizations require prospective tenants to complete behavioural questionnaires to evaluate their character.

My office is investigating whether these services comply with PIPA. In the meantime, landlords and tenants should consider the following principles when using these services.

1. A landlord cannot require a prospective tenant to consent to use a tenant suitability service, as it is not necessary for the provision of the tenancy. Any landlord who requires prospective tenants to use such a service is likely in contravention of s. 7(2) of PIPA.
2. PIPA applies to organizations providing tenant suitability services in the same manner it applies to landlords. The categories of always, sometimes, and never described in this report also apply such that the use of social media and internet searches and credit checks are likely not authorized by PIPA.
3. Individuals who are the subject of a tenant suitability report have the right to a copy of that report under s. 23 of PIPA, the right to know what personal information was used to compile the report, and how that information was used to derive the tenant suitability score.
4. A landlord who uses a tenant suitability report to make a decision about a prospective tenant is required by s. 35 of PIPA to retain that report for one year in order to provide a copy to the prospective tenant upon request, whether or not that individual was the successful applicant.
5. Any questions asked of a prospective tenant must relate to their suitability for a tenancy. Other characteristics such as kindness or quality of character are likely not reasonable, and are certainly not necessary, and therefore cannot be required.

### RECOMMENDATION 13

Landlords should not require prospective tenants to consent to the collection of personal information by a tenant suitability service in order to apply for a tenancy.

## 9.0 SUMMARY OF FINDINGS AND RECOMMENDATIONS

**FINDING 1:** Nine of 13 landlords I investigated ask for general consent to collect personal information from any source they deemed necessary.

**FINDING 2:** The types of personal information listed in this “always authorized” section are the only types that may always be required of every applicant. However, 12 of 13 landlords investigated require that every applicant provide more than these types of personal information.

**FINDING 3:** Ten of 13 landlords require credit checks from all prospective tenants, which is not reasonable under PIPA.

**FINDING 4:** Ten of 13 landlords in this investigation collect information that, if used, would contravene the Human Rights Code as well as PIPA.

**FINDING 5:** Many landlords collect personal information from social media and other internet sources, in contravention of PIPA.

**FINDING 6:** Eight of 13 landlords collect personal information that is only reasonable to collect after a tenancy has been established.

**FINDING 7:** Not-for-profit landlords may collect personal information from prospective tenants about protected grounds under the *Human Rights Code* where the not-for-profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by that protected ground. In all other respects the always, sometimes, never categories described above also apply to not-for-profit landlords.

**FINDING 8:** Many not-for-profit landlords are confused about whether PIPA or FIPPA applies to their collection, use or disclosure of personal information.

**FINDING 9:** Six of 13 landlords in this investigation do not keep unsuccessful applications for at least one year as required by PIPA.

**RECOMMENDATION 1:** Landlords must state clear, specific purposes for the collection of personal information from prospective tenants. Landlords cannot include general consent provisions that purport to provide authority for any future collection, use, or disclosure of personal information.

**RECOMMENDATION 2:** The only types of personal information that may be required of every prospective tenant are those listed in this “always authorized” section. If a landlord chooses to use a one-size-fits-all application form then it must not require more personal information than listed in this section.

**RECOMMENDATION 3:** Landlords should only require a prospective tenant to consent to a credit check, and provide information to allow the landlord to perform a credit check, when the prospective tenant cannot provide sufficient references about previous tenancies or satisfactory employment and income verification.

**RECOMMENDATION 4:** Many credit reporting agencies only offer “all or nothing” reports. Credit reporting agencies should offer reports to landlords that limit the personal information being disclosed to that which relates to suitability for a tenancy.

**RECOMMENDATION 5:** Landlords should explicitly state whether the credit report they collect could lower the prospective tenant’s credit score. They must also state on the form which credit reporting agencies are providing the information.

**RECOMMENDATION 6:** Landlords should revise application forms to ensure they do not collect information that, if used, would contravene the *Human Rights Code*.

**RECOMMENDATION 7:** Landlords must not collect information about prospective tenants from social media platforms or internet search engines other than those few sources of publicly available information prescribed by PIPA.

**RECOMMENDATION 8:** Landlords should only collect information for managing a tenancy after a tenant accepts the tenancy. Any information collected on an application form about a prospective tenant must be limited to determining suitability for a tenancy.

**RECOMMENDATION 9:** Not-for-profit landlords should review their application process to ensure that all of the personal information they collect is either a permitted defence to discrimination or falls within the scope of the exemption in s. 41(1) of the *Human Rights Code*. Next, they should ensure that they are not collecting personal information that exceeds what is necessary for the organization to determine if the applicant is eligible for tenancy.

**RECOMMENDATION 10:** Not-for-profit landlords who are funded by a public body should work with my office and the public body to determine their responsibilities under PIPA or FIPPA.

**RECOMMENDATION 11:** Landlords should implement a retention policy for personal information, ensuring that personal information collected from prospective tenants is retained for one year and then deleted as soon as it is no longer necessary for a legal or business purpose.

**RECOMMENDATION 12:** Landlords should include or summarize the retention policy on their application forms.

**RECOMMENDATION 13:** Landlords should not require prospective tenants to consent to the collection of personal information by a tenant suitability service in order to apply for a tenancy.

## 10.0 CONCLUSION

Overall, I found that the landlords I investigated collect too much personal information from prospective tenants. I heard from many individuals who felt they had no other choice but to provide sensitive personal information on a tenancy application, so they did not miss out on a place to live. It was the norm for landlords to require information such as bank statements, credit checks, and information that is protected under the *Human Rights Code*.

Even though my office receives daily calls about this issue I receive few actual complaints. Many requests for information about these practices are made anonymously, because prospective tenants worry about losing a housing option by making a formal privacy complaint.

Many landlords are unaware that they are subject to BC's privacy laws. Whether working for a professional management company or renting out a basement suite, landlords must understand their responsibilities under PIPA.

I only touch on the use of tenant suitability algorithms in this report. As I became aware of these services toward the end of this investigation, I determined that the issue warrants a separate investigation.

My office will follow up in one month with the landlords who participated in the investigation to ensure my recommendations are implemented and that their practices are compliant with PIPA.

## 11.0 ACKNOWLEDGEMENTS

Each landlord investigated cooperated fully with my office's investigation.

I would like to thank Bradley Weldon, Acting Deputy Commissioner, and Erin Beattie, Director of Communications, who conducted this investigation and contributed to this report.

March 22, 2018

### ORIGINAL SIGNED BY

Drew McArthur  
Acting Information and Privacy Commissioner  
for British Columbia