

Guidance on inappropriate data practices:

1. Contact details for this entry:

- a. Name and email address of person completing this form:
- b. Name of Data Protection or Privacy Authority: Office of the Privacy Commissioner of Canada.

2. Eligibility: By submitting this entry I confirm that:

- a. The Authority is a member of the International Conference of Data Protection and Privacy Commissioners.
- b. The initiative described in this entry was undertaken since the last edition.
- c. I am aware that the information in the entry (other than the contact details in 1(a) above) will be publicised by the ICDPPC Secretariat.

3. Please indicate which **category or categories** you wish to enter (delete those that do not apply; you can enter multiple categories):

- a. Education and public awareness
- b. Accountability

4. Description of the initiative

- a. Please provide a brief summary of the initiative (no more than 75 words):

Under Canadian private sector privacy law, even with consent, an organization must still show that its purposes for collecting, using or disclosing personal information in the first place are ones that a reasonable person would consider appropriate in the circumstances.

This guidance document sets out a series of “no-go zones” which the Office of the Privacy Commissioner generally considers offside of Canada’s federal private sector privacy law.

- b. Please provide a full description of the initiative (no more than 350 words):

In this age of big data, the IoT, AI and robotics, it is no longer entirely clear to consumers who is processing their data and for what purposes. For individuals, the cost of engaging with modern digital services means accepting, at some level that their personal information will inevitably be required to be collected and used by companies in exchange for a product or service.

The guidance on “no-go zones” suggests to companies which practices are inappropriate and informs individuals of what organizations are generally prohibited from doing, even with consent.

There is a provision in Canada’s private sector privacy legislation that serves as a critical gateway that either allows or prohibits organizations to collect, use and disclose personal information, depending on their purposes for doing so. It is the legal boundary that protects individuals from the inappropriate data practices of companies. It separates those legitimate information management practices that organizations may undertake in compliance with the law, from those areas in which organizations cannot venture, otherwise known as “No-go zones”. In this guidance document, the OPC describes the guiding principles for interpreting this provision, setting out a series of no-go zones which we have determined, through past findings and extensive consultations with stakeholders and focus groups with individuals across Canada, are offside.

The “no-go zones” are:

- Collection, use or disclosure that is otherwise unlawful.
- Profiling or categorization that leads to unfair, unethical or discriminatory treatment contrary to human rights law.
- Collection, use or disclosure for purposes that are known or likely to cause significant harm to the individual.
- Publishing personal information with the intended purpose of charging individuals for its removal.
- Requiring passwords to social media accounts for the purpose of employee screening
- Surveillance by an organization through audio or video functionality of the individual’s own device.

There is value in, even a need for, specific examples of practices that will generally be found inappropriate and that the no-go zones should set useful boundaries for individuals and organizations. It is our intention to periodically revisit and update the above list of “No-Go zones” as warranted.

c. Please explain why you think the initiative deserves to be recognised by an award (no more than 200 words)

Clearly defining inappropriate uses of personal data serves two important purposes. First, it protects individuals. Second is plays an important role in maintaining trust in the digital economy.

-One-

Individuals should not be expected to shoulder the heaviest burden when it comes to deconstructing complex data flows in order to make informed decisions on whether or not to provide consent; in other words, though consent must remain important, it cannot serve as the only mechanism of privacy protection

-Two-

This guidance plays an important role in mitigating the risk that consumers will lose trust in the digital economy, thus hindering its growth, and they may not enjoy all the benefits afforded by innovation.

Having a specific list of no-go zones in a guidance document provides the flexibility to periodically revisit and update the list to keep pace with rapid change and innovation, which the OPC intends to do.

Finally, while created primarily with the Canadian legislative context in mind, the list transcends any given piece of legislation, and would serve as useful guidance to any company, regardless of location, of practices that should not be undertaken.

d. Include a photograph or image if you wish (note this will help illustrate the description of the entry on the ICDPPC website; the image can be pasted into the entry or send as an attachment or a link may be provided):

e. Please provide the most relevant link on the authority’s website to the initiative (if applicable) (The website content does not need to be in English): https://www.priv.gc.ca/en/privacy-topics/collecting-personal-information/consent/gd_53_201805/

f. Please provide any other relevant links that you wish that help explain the initiative or its impact or success (e.g. links to news reports or articles):