

## APPENDIX K

### Privacy Policy

In this policy:

- a. “administrative purpose” means the use of information about an individual in a decision-making process that directly affects that individual. This includes all uses of personal information for confirming identity (authentication and verification purposes) and for determining eligibility of individuals for government programs.
- b. “agent” means an individual registered with the College as a Patent Agent or Trademark Agent.
- c. “Board” means the Board of Directors of the College of Patent Agents and Trademark Agents (“the College”). The Board consists of nine directors, five appointed under s. 13 of the CPATA Act and four elected.
- d. “CIPO” means the Canadian Intellectual Property Office.
- e. “the College” means the College of Patent Agents and Trademark Agents.
- f. “CPATA Act” means the *College of Patent Agents and Trademark Agents Act*.
- g. “non-administrative purpose” means the use of personal information for a purpose that is not related to any decision-making process that directly affects the individual. This includes the use of personal information for research, statistical, audit and evaluation purposes.
- h. “OPC” means the Office of the Privacy Commissioner of Canada.
- i. “patent agent” means an individual who holds either a patent agent licence or a patent agent in training licence.
- j. “personal Information” means information about an identifiable individual that is recorded in any form. As defined in section 3 of the *Privacy Act*: “*information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,*
  - *information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual;*
  - *information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;*
  - *any identifying number, symbol or other particular assigned to the individual;*
  - *the address, fingerprints or blood type of the individual;*

- *the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations;*
- *correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence;*
- *the views or opinions of another individual about the individual;*
- *the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual; and*
- *the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual."*

k. "personal information bank" means a description of personal information that is organized and retrievable by a person's name or by an identifying number, symbol or other particular assigned to that person. The personal information described in the personal information bank has been used, is being used, or is available for an administrative purpose and is under the control of a government institution. Institution-specific personal information banks are specific to the College; standard personal information banks are those containing personal information for a common internal service (e.g., accounts payable, receivable, access to information requests).

l. "PIA" means Privacy Impact Assessment, which is a due diligence exercise that: identifies and addresses potential risks to the privacy of individuals' personal information that may arise during the implementation of a system, project, program or activity of the College or a change thereto; and helps to support the College's compliance with this policy, the *Privacy Act* and the *CPATA Act*.

m. "privacy breach" means the unauthorized collection, use or disclosure of personal information. Such activity is "unauthorized" if it occurs in contravention of the *Privacy Act*. A breach may be the result of inadvertent errors or of malicious actions by employees, agents, contractors, third parties, partners in information-sharing agreements, or intruders.

n. "Privacy notice" means a notification, electronic or otherwise, to individuals about: the purpose for which personal information is collected (i.e., principally how the information is intended to be used); the authority for such collection; and the contact information for an individual within the College who can answer questions about the collection. A privacy notice should provide a reference to the College's Privacy Statement where more information about the College's information practices may be found.

o. "Privacy Officer" means the individual designated by the Chief Executive Officer (CEO) or head of the College under section 73(1) of the *Privacy Act*.

p. "Privacy Statement" means a publicly available statement that explains the personal information the College collects, uses, discloses, stores, and protects in compliance with applicable legislation, and how individuals may exercise their privacy rights with respect to their personal information held by the College.

q. "service provider" means an organization, business or individual that provides services to the College (e.g., IT, consulting, advisory services) and is not an employee of the College.

r. "TBS" means the Treasury Board of Canada Secretariat. TBS provides advice and makes recommendations to the Treasury Board committee of ministers on how the government spends money on programs and services, how it is regulated and how it is managed.

s. "trademark agent" means an individual who holds either a trademark agent licence or a trademark agent in training licence.

## 1. POLICY OBJECTIVES

- The College complies with the *Privacy Act* and applicable TBS policies and directives governing personal information in its custody or control; and
- All individuals working with, for or on behalf of the College are accountable for respecting the privacy rights of individuals, in accordance with the Federal *Privacy Act* and TBS policies whenever they are collecting, using, disclosing, storing or disposing of personal information in carrying out their duties.

## 2. SCOPE

This policy applies to these individuals when acting for or on behalf of the College with respect to personal information in the custody or under the control of the College:

- The College Board;
- Individuals employed by the College on a permanent, temporary, part-time, or contract basis;
- Members of the Investigations Committee, Discipline Committee, Registration Committee, and of any governance or ad hoc committees established by the Board or the CEO; and
- All service providers of the College to the extent that they collect, access, use, process or store personal information on behalf of the College as part of their duties.

## 3. POLICY STATEMENT

Personal information in the College's custody or under its control is only created, collected, retained, used, disclosed and disposed of in a manner that respects and complies with the *Privacy Act* and its Regulations and aligns with TBS privacy policies and directives. The College upholds the privacy rights of individuals whose personal information is controlled by the College, in accordance with these requirements.

## 4. PROCEDURES

### 4.1 Accountability for Personal Information

- The College is accountable for personal information in its custody and under its control. The College has developed, implemented and maintains, a Privacy Management Program to facilitate meeting its privacy obligations, adhering to privacy principles, and managing privacy risks over time.

- The College's accountability extends to personal information that is collected, used (e.g., handled or processed), accessed, disclosed, stored or disposed on its behalf by service providers. The College uses contractual or other means to hold service providers accountable for complying with the College's obligations.
- The CEO of the College has designated a Privacy Officer under section s. 73(1) of the *Privacy Act* with the powers, duties, and functions to make sure the College's complies with privacy legislation, through the College's Privacy Management Program.
- Individuals subject to this policy must:
  - formally acknowledge (in writing) upon hire or contract signing they have reviewed, understand and agree to comply with the College's privacy policies, and annually confirm this agreement;
  - complete the required privacy training within the first month of their employment or contract, and any additional privacy training required thereafter; and
  - adhere to this Privacy Policy and supporting privacy procedures when collecting, using, disclosing, storing, handling and retaining personal information.
- The Privacy Officer will facilitate privacy training for individuals and periodically review and update the privacy training based on significant changes to privacy legislation, best practices, or risks impacting the College.

#### 4.2 Privacy Impact Assessments

- In accordance with the TBS Directive on Privacy Impact Assessments, the College will complete a PIA (using the template in Annex C of the TBS Directive on Privacy Impact Assessments) for a program or activity in the following circumstances:
  - when personal information is used for or is intended to be used as part of a decision-making process that directly affects the individual; and
  - upon substantial modifications to existing programs or activities where personal information is used or intended to be used for an administrative purpose.
- The requirement for a PIA will be incorporated as a component of the College's project management, IT planning, and new business process development.
- The College will notify the Privacy Commissioner of any planned initiatives (legislation, regulations, by-laws, policies, or programs) that could relate to the *Privacy Act* or to any of its provisions, or that may impact on the privacy of Canadians. This notification is to take place at a stage to permit the Commissioner to review and discuss the issues involved.
  - The Privacy Officer will work with the Office of the Privacy Commissioner to implement any recommendations or conduct any subsequent consultations throughout the development of the PIA.
- Completed PIAs must:

- be reviewed to determine compliance with applicable privacy legislation and this policy;
- be approved by the CEO;
- be provided to the TBS and the OPC; and
- be summarized and made available on the College website in accordance with the TBS Directive on Privacy Impact Assessments.

#### 4.3 Consent

- The College obtains written or verbal consent<sup>1</sup> from an individual under the following circumstances:
  - Before the indirect collection of personal information, unless seeking consent would result in collecting inaccurate information, would defeat the purpose of collection or would prejudice the use of the information collected;
    - for example, the College will generally collect personal information about an Agent from a complainant for the purpose of investigating the Agent without consent, as obtaining consent would prejudice the use of the information.
  - Before using or disclosing personal information for a purpose or purposes that are not consistent with the purposes for which the information was originally obtained or compiled;
  - Before disposing of personal information unless such disposition is expressly authorized by legislation, or the two-year minimum retention period established by the *Privacy Act* Regulations has passed; and
  - If it intends to disclose a complaint received by the College or any privileged or confidential information obtained in the course of an investigation or proceeding. In this case, written consent will be sought of all persons whose rights or interests may reasonably be affected.

Obtaining an individual's consent to a collection of personal information does not replace or establish authority for the collection of that information under the *Privacy Act*; rather the College will seek to collect only personal information that is directly related to and demonstrably necessary for the College's regulatory activities<sup>2</sup> (see section 4.4 for more information on collection).

#### 4.4 Collection of Personal Information

- Personal information may only be collected or created (e.g., issuing a licence number, or placing limitations on a licence is creating personal information) if:
  - the personal information is directly related to a regulatory activity of the College; and
  - the collection of the personal information is necessary for the College to meet its statutory purposes and its regulatory objectives.
- In determining whether the personal information is directly related to a regulatory activity, the College's powers, and duties under the *CPATA Act*, Regulations, by-laws and policies requiring or authorizing the collection of personal information should be consulted. The College's policies provide direction and guidance on the necessity of personal information to accomplish the College's objectives. Before collecting or creating new personal information, the College will:

- Identify the personal information to be collected;
  - Identify the purpose(s) for collecting each type of personal information;
  - Post a privacy notice (see section 4.5);
  - Identify each element of personal information to be included in a Personal Information Bank (PIB); and
  - Collect only as much personal information needed to accomplish the identified purpose(s).
- The College collects or creates personal information intended to be used for an administrative purpose directly from the individual to whom it relates except:
    - When the individual authorizes the College to collect the personal information from another source;
    - When the personal information is collected for a purpose for which the personal information may be disclosed to the College under subsection 8(2);
    - When collecting the personal information directly from the individual might result in the collection of inaccurate information; or
    - When collecting the personal information directly from the individual might defeat the purpose or prejudice the use for which the personal information is being collected. For example, the College will generally indirectly collect personal information about an Agent from a complainant for the purpose of investigating the Agent rather than directly from the Agent as direct collection would likely defeat the purpose or prejudice the use of the personal information.

#### 4.5 Privacy Notice

- At a location where it is likely to come to a reader's attention, the College provides an up to date a privacy notice before personal information is collected from individuals.
- The notice is adapted for either written or verbal communication, as required.
- The content of the notice includes:
  - The purpose and authority for the collection;
  - Any uses or disclosures that are consistent with the original purpose of collection;
  - Any legal or administrative consequences for refusing to provide the information;
  - The individual's rights of access and correct personal information under the *Privacy Act*;
  - Reference to the applicable PIB, as described in InfoSource; and
  - The right to file a complaint to the Privacy Commissioner of Canada regarding the College's handling of the individual's personal information.

#### 4.6 Use of Personal Information

- Personal information may only be used:
  - For the purpose for which the information was obtained or compiled by the College or for a use consistent with that purpose; or
  - For a purpose for which the information may be disclosed to the College under subsection 8(2) of the *Privacy Act*. This includes any purpose in accordance with any Act of Parliament or a regulation made thereunder that authorizes its disclosure.

- Individuals subject to this policy must:
  - Only use the minimum amount of personal information required for the immediate, valid purpose identified; and
  - Access personal information only on a need-to-know basis. Individuals are only permitted to access and use personal information when it is necessary to carry out their role within the College.

#### 4.7 Disclosure of Personal Information

- Personal information will not be disclosed unless consent of the individual is obtained, or if the disclosure is otherwise permitted or required under the *Privacy Act* or under the *CPATA Act*.
- For further clarity, and notwithstanding anything else to the contrary contained herein, personal information may be disclosed for the following purposes:
  - Maintaining the Registers of Patent Agents and Trademark Agents;
  - complying with a subpoena, warrant or court order;
  - if there is a risk of harm and the disclosure is in accordance with section 65(2)(e) of the *CPATA Act*;
  - For the purpose of adhering to the *Privacy Act* where, in the opinion of the CEO:
    - the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or
    - disclosure would clearly benefit the individual to whom the information relates; and
  - With the written consent of the individual to whom the information relates (such as disclosure to an intersectional regulator (e.g., provincial law society).
- Everyone subject to this policy must:
  - Only disclose the minimum amount of personal information required to meet the valid purpose identified; and
  - Consult with the Privacy Officer before disclosing any personal information outside of what is required for their role.

#### 4.8 Retention and Disposition of Personal Information

- Personal information is retained for the period needed to fulfill the identified and authorized purposes, or to comply with a legal requirement, in compliance with the College's Records Retention Schedule and the *Library and Archives Canada Act*;
- Personal information used for an administrative purpose is retained for a minimum of two years unless the individual authorizes the disposal; and
- Personal information no longer required to be retained according to the College's Records Retention Schedule, will be securely destroyed, erased or de-identified such that contents are unreadable.

#### 4.9 Accuracy

- The College takes reasonable steps to confirm that personal information is accurate, complete, and up to date as is necessary for the purposes for which it is to be used, and to



minimize the possibility that inaccurate or incomplete information may be used to make a decision that directly affects an individual.

- The College has documented procedures allowing individuals to request a correction of their personal information where the individual believes there has been an error or omission, in accordance with the College's Access to and Correction of Personal Information Procedure.

#### 4.10 Safeguarding Personal Information

- The College is accountable to protect personal information in its custody and under its control against such risks as unauthorized access, collection, use, disclosure, or disposal using reasonable security arrangements. The security arrangements include a combination of technical, administrative, and physical safeguards. The reasonableness of the security arrangements takes into consideration factors such as the sensitivity, amount, distribution, format and the method of storage of the information to be protected.
- When disclosing personal information, the College will implement reasonable safeguards before the information is shared.
- The College requires access to personal information to be role-based and limited to the minimum amount of information needed for the authorized purpose(s).
- The College monitors access to and use of personal information to provide timely identification of inappropriate or unauthorized access to or handling of personal information through such means as auditing.
- The College requires service providers to adhere to the College's legal obligations related to handling and safeguarding of personal information and service providers are required to comply with this privacy policy.
- College contracts with service providers that access, use or otherwise handle or store person information on the College's behalf include provisions to address:
  - obligations of the service provider acting on behalf of the College under applicable legislation and policies;
  - control over the personal information;
  - limitations on collection, use, disclosure, and retention of personal information;
  - secure disposition of the personal information;
  - administrative, technical and physical safeguards; and
  - providing the College with the right to review, assess, audit, or verify compliance with the service providers contractual obligations (as described above).

#### 4.11 Privacy Breach

- The College has published a Privacy Breach Management Protocol to be followed for all known or suspected privacy breaches to provide for an effective and timely response to privacy breaches, in accordance with legal requirements.



- Individuals subject to this policy must immediately report any actual or suspected breach of privacy to the Privacy Officer.
- If the Privacy Officer becomes aware of a Privacy Breach, the Privacy Officer must notify the CEO.

#### 4.12 Openness

- The College's practices for managing personal information are available to individuals, including members of the public and agents, through the College's Privacy Statements on its website. The Privacy Statements will be reviewed periodically and updated as needed based on changes in how the College collects, uses, discloses, or protects personal information.

#### 4.13 Individual Access

- Individuals may request access to their personal information and may examine or will receive a copy of their personal information maintained by the College, subject to exceptions in the *Privacy Act*, by making a request to the College Privacy Officer in writing.
- The College has published an Access to and Correction of Personal Information Procedure in compliance with the *Privacy Act* and TBS policies.
- Requests for access to personal information will be processed in accordance with the College's Procedure.
- Any requests for access to personal information must be immediately referred to the Privacy Officer.

#### 4.14 Privacy Inquiries

- The College has a Privacy Inquiries Procedure in compliance with the *Privacy Act* and TBS policies.
- All privacy inquiries (including privacy complaints) must be investigated by the College in accordance with its Privacy Inquiries Procedure.
- Upon receipt of a privacy inquiry, anyone subject to this policy must immediately refer the inquiry to the College's Privacy Officer.

#### 4.15 Personal Information Bank (PIB)

- The College has registered one PIB with the TBS related to Agent personal information.
- The College stores personal information in several standard PIBs including:
  - Access to Information Act and Privacy Act Requests PSU 901
  - Employee Personnel Record PSE 901
  - Security Incidents and Privacy Breaches PSU 939

- The College will notify TBS of changes to PIBs and, where these changes are substantial, will provide TBS a privacy impact assessment as required by the Directive on Privacy Impact Assessments.
- The Privacy Commissioner of Canada will be notified if the College plans to use personal information for a new, consistent use not already identified in the relevant PIB.

## 5. POLICY GUIDELINES

To support the administration of this policy, the College may develop additional written procedures to provide guidance in specific areas, in alignment with the direction of this policy and the Privacy Management Program. If written procedures or guidelines differ from this policy, this policy prevails.

## 6. ROLES AND RESPONSIBILITIES

### a) Employees

All employees are required to:

- Sign the College Confidentially Agreement, upon hire or upon contract signing and prior to accessing personal information, that they have reviewed, understand and agree to comply with this Privacy Policy and any supporting privacy policies and procedures when collecting, using, accessing, storing, handling, retaining, or disposing of personal information;
- Respect the privacy rights of individuals and protect personal information, as required under this policy; and
- Complete College privacy training as outlined in the College's Privacy Management Program and/or as directed by the CEO.

### b) Chief Executive Officer (CEO)

In addition to the duties outlines above, the CEO is accountable to:

- Delegate appropriate authority under the *Privacy Act* to the College's Privacy Officer;
- Review and approve the College Privacy Policy and its Privacy Statement(s) and any significant changes, and recommend approval to the Board;
- Implement and oversee compliance with this policy and the Privacy Management Program within the College and report to the College's Board;
- Recommend approval of the Privacy Policy and Privacy Statements to the Board;
- Make available the College's information practices to the public; and
- Approve agreements and contracts related to service providers' handling of personal information.

### c) Board of Directors and Committee Members

The Board is responsible to:

- Approve the College Privacy Policy, and Privacy Statements;

- Know and understand their obligations under this policy;
- Complete privacy training;
- Acknowledge the Board Code of Conduct, including the obligations to maintain confidentiality of all information (including personal information) received or reviewed during their time on the Board; and
- Receive and review periodic reports on the status of the Privacy Management Program and significant privacy risks as part of their role in overseeing organizational governance and risk.

Committee members are responsible to know and understand their obligations under this policy, adhere to the Code of Conduct and complete privacy training

#### d) Privacy Officer

The Privacy Officer is responsible to, in addition to the responsibilities of an employee:

- Provide advice and guidance to employees with respect to the management of personal information within the College;
- Monitor, assess and report to the CEO and through the CEO to the Board on the College's progress in implementing the Privacy Management Program;
- Maintain and update the Privacy Management Program (including the organization's policies, procedures, training and other privacy controls) as needed based on:
  - Changes in the College's legal or regulatory framework;
  - The outcome of PIAs, audits, or other privacy or security risk assessments;
  - Recommendations arising from privacy breach or complaints investigations;and
  - Emerging privacy risks and best practices.
- Identify the need for new or updated PIBs;
- Lead the process to complete or update PIAs as necessary, where required under this policy;
- Identify and assess privacy risks associated with projects, programs and services;
- Lead the College's response to privacy breaches, complaints and access/correction requests, ensuring compliance with *Privacy Act*;
- Prepare annual reports for TBS and OPC under the *Privacy Act* and TBS policies; and
- Monitor the College's response to privacy risks to mitigate them in an effectively and timely manner.

### 7. COMPLIANCE AND MONITORING

- The College Privacy Officer with the support from the CEO, monitors compliance with this policy.

- In the College’s Annual Report to the Minister under the CPATA Act, a report on compliance with this policy will be included.
- Non-compliance with this policy may be subject to disciplinary action, including termination of employment or contract.

**REFERENCES AND RELATED DOCUMENTS**

- *Federal Privacy Act and Regulations*
- *College of Patent Agents and Trademark Agents Act, Regulations and By-laws*
- TBS Directive on Privacy Practices
- TBS Policy on Privacy Protection
- *Patent Act*
- *Trademark Act*
- *Library and Archives of Canada Act*
- Standard on Privacy and Web Analytics

**CONTACTS FOR ADDITIONAL INFORMATION**

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