

CLIENT BRIEFING

The Privacy Commissioner's Submission on Modernizing the Privacy Act

Office of the Privacy Commissioner of Canada, submission to the Treasury Board Secretariat consultation on Privacy Act modernization, August 5, 2026

TO	Public Sector Organizations
FROM	Newport Thomson
DATE	August 7, 2026
SUBJECT	What the Privacy Commissioner is asking Ottawa to change in the federal public-sector privacy law, and why it matters to organizations
SOURCE	Office of the Privacy Commissioner of Canada, "Submission on the Treasury Board Secretariat consultation on the Privacy Act modernization," priv.gc.ca , August 5, 2026
STATUS	Consultation submission. Recommendations on a discussion paper, not enacted law. Subject to change.

SUMMARY

The Privacy Commissioner of Canada, Philippe Dufresne, has told the Treasury Board that he broadly supports the plan to modernize the Privacy Act, the law that governs how federal government institutions handle personal information. In the same breath, he asks Ottawa to push several of the reforms further, and he asks for one proposal to be reversed. The document is a submission on a discussion paper, which means it sets out recommendations rather than final law.

For our clients, the direct effect is limited, because this is the public-sector law and not the private-sector regime. The practical relevance runs three ways. Organizations that share data with, or deliver services to, federal institutions will feel the downstream requirements. The submission is a clear signal of where Canadian privacy law is heading. Its positions on anonymization and identifiability track the same debates now shaping the private-sector reforms.

We read this as direction of travel worth watching now, before the wording is settled. No good picking up speed if you are on the wrong road, and the road here is still being drawn.

AT A GLANCE

ITEM	POSITION	REFERENCE
Overall policy direction	Broadly supported	Parts 1 to 3
Moving access requests into the Access to Information Act	Opposed	Proposal 15
Binding order-making powers for the Commissioner	Supported, too weak as drafted	Proposal 19
Mandatory breach reporting with fixed timelines	Recommended	Part 1
Privacy Impact Assessments, including for AI	Recommended	Part 1
Anonymization and de-identification standards	Strengthen	Proposals 7 and 14
Identifiability and the “personal data” term	Codify the Gordon test	Part 3

1. WHAT THIS SUBMISSION IS, AND WHAT IT IS NOT

The Privacy Act is the federal public-sector law. It sets the rules for how government institutions collect, use, disclose, and protect the personal information they hold, from tax and health records to immigration and public-safety files. It is a separate instrument from the private-sector regime that governs businesses.

What the Commissioner filed on August 5, 2026 is a response to the Treasury Board’s consultation paper on modernizing that Act. It is a set of recommendations, not draft legislation and not law. The section and proposal numbers in the submission refer to the government’s discussion paper, so they will not map cleanly onto any eventual bill.

His anchor throughout is that privacy is a fundamental right, the same framing now running through Canadian privacy reform more broadly.

2. WHERE THE COMMISSIONER SUPPORTS OTTAWA AND ASKS FOR MORE

The submission backs the general direction and calls many proposals sound. Its value lies in the places where it wants them sharpened.

- Security safeguards would become a firm legal duty. Where data is processed or stored outside Canada, institutions would have to assess and reduce the transborder risk.
- Breach rules would carry real deadlines for notifying both affected people and the Commissioner, and the Commissioner could inspect institutions’ breach records.

- Privacy Impact Assessments would be mandatory in high-risk situations. The submission names AI directly, including high-impact AI systems, the training of AI models on personal information, and cross-border processing.
- The test for collecting information would move from the weak “*relates directly to*” standard to a clear necessity and proportionality requirement.
- The Act would be reviewed on a fixed five-year cycle, and the Federal Court’s remedies would expand to include damages.

*On collection, the Commissioner wants to retire the current threshold, which turns on whether information “**relates directly to**” an institution’s activity, and replace it with a necessity and proportionality test.*

3. THE TWO PRIORITY POINTS

These are the parts most worth a client’s attention, because they show where the Commissioner is willing to spend capital.

Proposal 15: keep access requests in the Privacy Act

The government floated moving requests for access to personal information out of the Privacy Act and into the Access to Information Act. The Commissioner disagrees, and his point is practical. Splitting the regime would force a person to deal with two laws and two regulators to exercise a single right, which weakens the right rather than streamlining it. His alternative is to keep access requests where they are, and to smooth the process through a memorandum of understanding among the three bodies involved.

Proposal 19: real teeth, not a corrective-action plan

The Commissioner supports finally giving his office binding order-making power, which Canada has lacked and which has left it out of step with peer regulators. He warns, though, that the drafted version is too soft. As written, he could only require an institution to publish a corrective action plan, leaving the institution to decide its own remedy. That would swap one weak mechanism for another. You cannot push on a rope. He wants genuine binding orders, used as a last resort after investigation.

4. DEFINITIONS THAT COULD RIPPLE WIDER

A large part of the submission is about how key terms get defined. This is where the language is most likely to influence privacy thinking beyond the public sector.

- Publicly available information can still be sensitive, so safeguards should follow the sensitivity of the data, not the mere fact that it was public. The Commissioner points to his office’s 2026 OpenAI investigation as the example.

- Anonymization should meet a high, continuing standard. He wants the definition to hold “*at all times*” and to cover re-identification “*by any means*,” and he wants attempts to re-identify anonymized data treated as an offence. The stakes are high because anonymized data would sit outside the Act entirely.
- De-identified data is still personal and still carries re-identification risk. He opposes a blanket exemption from access rights for it, keeps safeguards in place, and would route any sharing through written agreements.
- On terminology, the government may replace “*personal information*” with “*personal data*.” He supports dropping the old “*recorded in any form*” limit, but wants consistency with the private-sector and provincial laws, and wants the courts’ identifiability test from *Gordon v. Canada* written into the statute.

The identifiability standard the Commissioner wants written in

The test he asks Ottawa to codify comes from a 2008 Federal Court decision. It is the working definition of when data counts as being about an identifiable person.

Information is about an identifiable individual where there is a “serious possibility that an individual could be identified through the use of that information, alone or in combination with other available information.”

[Gordon v. Canada \(Minister of Health\), 2008 FC 258 at para 34.](#)

The phrase that does the heavy lifting is “*alone or in combination with other available information.*” Data does not have to name a person to be personal. If a plain-looking field can be matched with other available information to single out a real individual, it is caught. In *Gordon* itself, a bare province label revealed nothing on its own but combined with the rest of the database and other public information, it created a serious possibility that patients could be identified. This is the reason anonymization is genuinely hard, and it is the logic underneath the Commissioner’s demand that anonymization always hold and against re-identification by any means.

5. TRANSPARENCY, DATA SHARING, AND THE REGULATOR’S OWN VOICE

The Commissioner gives cautious support to sharing data across government to save citizens from repeating themselves, provided there are clear limits, a proportionality check, defined terms such as public interest, and real transparency through a public registry. He backs plain-language privacy notices and clear notices when automated decision systems are used. He also asks for a stronger public role for his own office, including more discretion to report publicly and an explicit mandate for research and public education.

WHAT IS NOT IN THE SOURCE

This is a consultation submission, not a bill. It does not change any private-sector obligation, and it does not fix the final wording of anything. The proposal numbers belong to the Treasury Board discussion paper, not to enacted sections, so they should not be cited as law. Where the government's own proposals leave detail open, for example on integrated services and data sharing, the Commissioner says the detail is still to come, and so do we.

WHAT WE SUGGEST DOING NOW

- Treat this as an early read on direction, not as a compliance trigger. Nothing here binds a private organization today.
- If you exchange data with, or deliver services to, federal institutions, watch the emerging breach timelines, the AI-triggered impact assessments, the transborder assessment duty, and the move toward written data-sharing agreements.
- Watch the anonymization, de-identification, and identifiability language closely, because the same concepts are live in the private-sector reforms and the wording here may shape how they are read.
- We will update you as the consultation shifts and as any of these moves from proposal to draft legislation.

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