

**From:** [Paul Meunier](#)  
**To:** [EconomicFuture Committee](#)  
**Subject:** Federation Letter re PIPA for Standing Committee on Albertas Economic Future  
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[Federation Letter re PIPA for Standing Committee on Albertas Economic Future.25Feb2016.pdf](#)

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Dear Standing Committee on Alberta's Economic Future,

Please see attached our letter regarding the "Discussion Guide" for proposed PIPA changes, deadline February 26, 2016.

Thank you kindly for your consideration in our feedback.

**Paul Meunier**

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Thursday, February 25, 2016

**Attention:**

**Standing Committee on Alberta's Economic Future  
c/o Jody Rempel, Committee Clerk  
3rd Floor, 9820 - 107 Street NW  
Edmonton, AB T5K 1E7**

**Email: [EconomicFuture.Committee@assembly.ab.ca](mailto:EconomicFuture.Committee@assembly.ab.ca)**

**Fax: 1-780-427-5688**

The Federation of Calgary Communities is sending the following written submission on behalf of questions from the Standing Committee on Alberta's Economic Future, "Discussion Guide: *The Personal Information Act*." As per the instructions in the guide, this document is being emailed to the above listed email address. It will also be transmitted by fax, simply to ensure its arrival by deadline Friday, February 26.

The following information establishes the Federation of Calgary Communities' position that we oppose removing the exemption for non-profits currently not covered under PIPA legislation. We understand that in previous committee reviews, and the current committee review, there have been considerations to remove this exemption to include *Societies Act* groups with other organizations required to comply with PIPA legislation. The Federation of Calgary Communities believes that, like previous findings, "[non-profits] complying with PIPA might result in an administrative burden, especially for small- and medium-sized organizations and volunteer organizations in the non-profit sector" (*Personal Information Protection Act Review "Discussion Guide" 27*).

Our position has previously been, and continues to be, one of concern that our member organizations under the *Societies Act*, all governed and led by volunteers, do not have the capacity or necessary resources to adhere to PIPA's nuanced requirements. We do recognize and appreciate the numerous exemptions, and exceptions to particular rules, throughout PIPA legislation. However, among a network of grassroots, volunteer-led organizations, these kinds of discrepancies only further complicate the ability for volunteer board members (many organizations of whom don't have paid staff), to bear the administrative burden and attempt to navigate complex systems that may or may implicate them at any given time.

The following letter outlines a detailed response to the questions raised by the "Discussion Guide." While this letter is a direct reflection of our own observations and organizational standpoint, we have also spoken with other organizations like the Edmonton Federation of Community Leagues who share similar concerns. Thank you kindly for your consideration in our feedback.

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## Responses to 22 questions outlined in “Discussion Guide: *The Personal Information Act.*”

*\*The PIPA descriptions and contexts preceding each question in the “Discussion Guide” have been removed*

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### **1. Are the provisions of the Act regarding the collection, use and disclosure of information by trade unions appropriate? Please explain why or why not and provide suggestions.**

This question does not currently raise concerns for the Federation of Calgary Communities, on behalf of our community-based, non-profit network of member organizations under the *Societies Act*.

For the purposes of concision, further responses to questions will identify “*Societies Act* groups,” on behalf of the 150 community associations in Calgary. It should be noted, however, that we do have more than 70 non-voting, community-based non-profit organizations in addition to the community associations in our network.

### **2. Should PIPA include additional exceptions to consent that would permit other kinds of organizations (i.e., other than trade unions) to collect, use or disclose personal information of individuals for purposes of free expression without those individuals’ consent? If so, which kinds of organizations and for what types of free expression purposes?**

The Federation of Calgary Communities does not request additional exceptions to consent be granted at this time. We request that the current exceptions to *Societies Act* groups remain unchanged. Further comments for consideration have been identified in other questions.

### **3. Are the exemptions to PIPA appropriate?**

Many of these exemptions are appropriate, as community associations may collect personal information “for artistic or literary purposes; for journalistic purposes; [as] business contact information,” and for provincial records, as per filings with the Corporate Registry, Service Alberta. However, the typologies of grassroots, non-profit organizations governed by volunteers are incredibly diverse: from their varied organizational frameworks; the scope of work they engage within mandates of social, educational, and recreational programs and services; and the personnel spectrum of members, program volunteers, board of director volunteers, and employees they engage with to accomplish their work. Exemptions, while appropriate and greatly appreciated, create a fractious understanding of what can, and cannot, be applied to legislative standards should *Societies Act* groups be amalgamated into PIPA, regardless of suitable exemptions.

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**4. Are the provisions dealing with forms of consent and the conditions attached to their use appropriate? Please explain why or why not and provide suggestions.**

“Forms of Consent” are accommodating, therefore they appear reasonable. However, the Federation of Calgary Communities does not believe that *Societies Act* groups have the human resources, volunteer or employee-based, to either:

“Before or at the time of collecting personal information from the individual the information is about, the organization must give notice to the individual explaining the purposes for collection...” or

“[provide] the name of a person who can answer questions about the collection.”

Both circumstances require the education of board volunteers to:

- (a) learn the value and necessity of understanding legal nuances of these practices
- (b) create or customize, then adopt policy to ensure continuity in upholding these practices
- (c) delegate authority to ensure personnel oversight over these practices
- (d) provide training and implementation required to enact these practices
- (e) build a compliance framework to ensure that volunteer turn-over, (particularly in the absence of employees who can offer support) upholds all necessary practices moving forward.

**5. Does PIPA adequately support individuals who are unable to provide consent for the collection, disclosure and use of their personal information? Please explain why or why not and provide suggestions.**

This question does not currently raise concerns for the Federation of Calgary Communities, based on the necessary conditions for others to provide consent, circumstantially, on an individual’s behalf.

**6. Are the exceptions to consent for the collection, use, and disclosure of personal information appropriate? Please explain why or why not and provide suggestions.**

As it is a *Societies Act* legislative requirement to determine certain matters of record keeping at a bylaw-level (e.g. a non-profit’s requirement to stipulate how they provide access to viewing membership records upon request, or access to meeting minutes); or, provincial processes for granting record access (e.g. requirements to submit annual Society Annual Return forms containing personal information of directors, then available for access through the Corporate Registry), the relevant exceptions which may apply to non-profits appear reasonable.

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**7. Should the provisions of PIPA pertaining to disclosure without a warrant be changed? If so, what should be changed?**

This question does not currently raise concerns for the Federation of Calgary Communities, based on the legal nature of the circumstances.

**8. Should organizations be required to publish transparency reports on disclosures made without consent to public bodies and law enforcement agencies?**

The Federation of Calgary Communities understands the intent behind such a provision. However, to suggest that “transparency reports” be required on regular intervals (as per the footnotes in the “Discussion Guide”) would be a burdensome administrative task for voluntary organizations with limited administrative capacities. For small, grassroots voluntary organizations where such information may rarely be requested by legal authorities, thereby limiting the need for a regularly maintained report-tracking system, this appears to be an unnecessary provision for groups working in low-risk environments. The Federation of Calgary Communities requests that should the exemption for *Societies Act* groups be removed, and non-profits held accountable to PIPA standards, that such transparency reports be clearly defined as applicable only under necessary, legally valid circumstances.

**9. Are the processes for accessing records of personal information appropriate? Please explain why or why not and provide suggestions.**

Providing 45 days to allow for an organization to grant access to requested records of personal information appears reasonable. However, it suggests a precedent that all non-profit organizations have standardized methods of recording, storing, and accessing their own records with continuity. The Federation of Calgary Communities is aware that different *Societies Act* groups establish different methods of records retention, especially due to volunteer board turnover and the natural challenges that arise during periods of transition.

Furthermore, charitable sector requirements for “public” record retention, documents which may include personal information, are to be retained for the lifetime of a non-profit’s existence. Record retention is a challenge that many organizations approach differently, resulting in documentation stored by any means possible, and often with strains on a process for easy access. An organization functioning out of a large, multiuse facility or arena building will have incredibly different capacity issues, and storage and access capabilities, than incorporated, non-facility based groups where records might be stored in directors’ personal homes or secured storage units.

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This question (9) is merely dealing with “access” to records. Yet it is crucial to remember that by considering removal of the exemption of *Societies Act* groups, a precedent is being set that it is reasonable to establish overarching regulations for a multitude of organizations that not only do things differently from one another, but many of whom lack the privilege of running sophisticated operations and can manage something as important as record retention, without inefficiencies.

**10. Are the provisions regarding fees for accessing records of personal information appropriate? Please explain why or why not and provide suggestions.**

This question does not currently raise concerns for the Federation of Calgary Communities.

As a side-note, *Societies Act* groups have a responsibility to comply with the requests of their membership, dependent on the circumstances of a situation. As such, a “fee for accessing records” process seems counterintuitive given the board-to-membership relationship where records are already provided free of charge for accountability and transparency (e.g. granting free access to bylaws, or limited access to membership records and meeting minutes, etc.)

**11. Should PIPA provide a fee structure for access to personal information? Please explain why or why not and provide suggestions.**

This question does not currently raise concerns for the Federation of Calgary Communities – see response to question 10.

**12. Are the exemption provisions for refusing access to an individual’s own personal information appropriate? Please explain why or why not and provide suggestions.**

Similar to our response in question 3, exemptions, while appropriate and greatly appreciated, create a fractious understanding of what can, and cannot, be applied to legislative standards.

**13. Are the provisions pertaining to personal employee information appropriate? Please explain why or why not and provide suggestions.**

Similar to our response to questions 3 and 12. “Exceptions to the rules” may cause confusion for non-profit boards when personal information is collected and used, given the fact nearly all personnel involved in the association qualify as affected parties. It is questionable why there would be an interest to bring *Societies Act* groups under

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PIPA legislation when a significant amount of the personal information collected, used, or disclosed fits within what constitutes an “employee,” including: “an individual employed by an organization or who performs a service for an organization as a partner or director, officer or office holder, apprentice, volunteer, participant, or student.”

Furthermore, a significant amount of the use of personal information would qualify as part of the “recruitment, management, or termination of the employment or volunteer-work relationship, or managing the post-employment or post-volunteer work relationship.”

The Federation of Calgary Communities believes that *Societies Act* groups require the ability to retain all the aforementioned exemptions, so as not to incapacitate our non-profits with complicated, and nuanced legislative requirements. Amalgamating *Societies Act* groups into PIPA legislation will burden our non-profits with the responsibility of tending to complex regulatory oversight. Furthermore, the (necessary) exemptions will require an ability to scrutinize PIPA standards that will also likely result in few administrative applications being relevant, in spite of the resources required to prepare for compliance.

**14. Are the provisions pertaining to employee references appropriate, or is more clarity needed about the information that may be disclosed in a reference? Please explain why or why not and provide suggestions.**

This question does not currently raise concerns for the Federation of Calgary Communities, particularly due to the fact employee references have gradually moved away (in different sectors) from granting organizations the right to share liberal amounts of information not pertinent to the questions at hand.

**15. Are the processes set out in PIPA for retaining, destroying, and caring for personal information appropriate? Please explain why or why not and provide suggestions.**

Similar to our response to questions 4 and 9, this sets a precedent that *Societies Act* groups will have the necessary resources and personnel to dedicate attention to the records retention, storage, protection, and eventual destruction based on a period of time “When an organization no longer requires personal information for legal or business purposes.”

Different non-profits must manage these practices within the framework of their own organizational capacities. To be operationally sustainable, and to be an employer with an ability to attract and retain key volunteer and staff positions, non-profits need to work with the given resources available to them and establish practices that are manageable. That is not to suggest that “best practices” for “access, collection, use, disclosure, duplication, modification, disposal, or destruction” need not be addressed. But the diverse capacity and capabilities of non-profit organizational standards must be considered within individual frameworks, as opposed to legislative requirements that complicate administrative standards and expectations.

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There are many *Societies Act* groups who struggle with varying degrees of security, in their efforts to properly secure and store valuable (or personal information). Much of this has to do with the fact that a significant number of non-profits are not running facility-based operations. While the efforts to protect sensitive information are a key priority for all non-profits and their boards of directors, it must be recognized that not all groups have an ability to achieve what might be considered “reasonable care” in one environment; as opposed to a less secured, potentially “at risk” form of storage or care in another (e.g. there is a huge gap in ability between a non-profit with an ability to secure documents under lock and key in a facility, and those with potentially sensitive information stored in a box inside a board member’s home.) It is also worth noting that electronic security measures can be equally difficult to secure.

**16. Is the level of transparency required of organizations using third-party service providers outside of Canada sufficient? Please explain why or why not and provide any suggestions for improvement.**

This is a challenging suggestion should *Societies Act* groups be amalgamated under PIPA legislation. It also implicates electronic security issues, as identified in question 15. The Federation of Calgary Communities’ member organizations turn to third party web and software developers for numerous software applications, many of which may contain the collection and use of personal information. Some examples may include hall rental booking software, employee web portals, and perhaps most commonly, membership management software.

The Federation of Calgary Communities has surveyed our member community associations in previous years to learn more about the software options that are predominant among our network. We have learned that the various software functionalities (alluded to above), are typically sourced based on the quality of the web function or service it provides, not the physical location in which the business is based. Suggesting that PIPA legislation would require new protocols for *Societies Act* groups utilizing different software programs outside of Canada is a difficult burden to ask of our member organizations. This has not even leant consideration to the fact that non-profits often piecemeal numerous software programs together, using different providers to create a multi-functional web service for the managerial benefit of the organization. The PIPA requirement for serving notification regarding the use of international web-based service providers is not a manageable expectation for non-profits.

**17. Are the provisions of PIPA regarding notification of a breach of privacy appropriate? Please explain why or why not and provide suggestions.**

This question does not currently raise concerns for the Federation of Calgary Communities, presuming the “breach of privacy” remains defined as “posing a real risk of significant harm to affected individuals,” out of respect for personal safety, human rights, and legal rights.

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**18. Should the Commissioner’s powers be changed or expanded? Please explain why or why not and provide suggestions.**

The general process for the Commissioner’s involvement and investigation is understandable, based on the notion that a serious situation might warrant such involvement.

However, the Federation of Calgary Communities’ principle concern regarding the Commissioner’s powers are in regards to impacts on the non-profits under scrutiny, including: administrative disruptions on small non-profits with limited resources and priorities for their community work; the human resources required for organizations with limited personnel; a range of small-to-large financial impacts, either due to a potentially extensive complaint process or legal consequences; and the inability to retain staff or volunteers who have less ability to see longer processes through to their completion, or are deterred from remaining involved.

**19. Are the sections pertaining to offences functioning as intended and are they strong enough to deter breaches and actions in contravention of the Act? Please explain why or why not and provide suggestions.**

While we are aware that “To date, there have been no charges laid pursuant to these sections in PIPA,” the threat of penalty that “an offence under the Act is liable to a fine of up to \$10,000 in the case of an individual, and up to \$100,000 in the case of an organization” is a serious financial risk. Due to the aforementioned points that have been raised, *Societies Act* groups could largely be entering into an inability to comply from the onset, despite the range of PIPA regulations and circumstantial exemptions, with financial penalties that compel urgency for compliance in spite of a lack of readiness or capacity.

Organizations like the Federation of Calgary Communities are not in a position to educate our member organizations on “low probability” of risk: we educate our member organizations on standards of practice, and refer them to their own legal compliance obligations.

While the threat of penalty remains low (allegedly almost non-existent), the requirement for compliance is something the Federation of Calgary Communities must promote. Therefore, if *Societies Act* groups are amalgamated under PIPA legislation, the message promoted to our non-profits will be one of compliance expectations, legal risks, and serious financial penalties. While the Federation of Calgary Communities has 200 plus member organizations in our network, there are thousands of incorporated non-profits in the province of Alberta. Suggesting that *Societies Act* groups should be accountable to PIPA legislation, is presuming that thousands of non-profit organizations are capable of understanding and implementing (new) legislative requirements, regardless of the “reasonability” referred to in these interpretations. It does not account for the fact that many non-profits work within organizational models that often need support at the most fundamentally basic levels of policy development for good governance.

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**20. Are the provisions in the Act regarding professional regulatory organizations appropriate? Please explain why or why not and make suggestions.**

As *Societies Act* groups have previously been granted exemption status under PIPA, the Federation of Calgary Communities has continuously worked to educate our members around valuable “standards of practice,” particularly through bylaw reviews and policy development.

While “Professional Regulatory Organizations” (PROs) or their “Personal Information Codes” are recognized differently than *Societies Act* groups, we believe a precedent has been set that has acknowledged scenarios where different incorporation models have been accommodated to establish their own standards of practice. Similarly, voluntary sector standards of practice recommend policy development to augment bylaws and help create a continuity of practice. Confidentiality agreements, code of conduct, records protection and retention, and employer-employee relation policies are all “best practices” the Federation of Calgary Communities has educated our members on. We also believe that previous documents, like the Government of Alberta’s “Protecting Personal Information: A Work-Book for Non-Profit Organizations” guide for groups outside PIPA’s jurisdiction, adds to the established precedent that a sufficient amount of education can be enabled without legislative compliance coming into effect.

**21. Is the application of the Act to non-profit organizations appropriate, or should all non-profit organizations be subject to PIPA in all of their activities? Please explain why or why not and provide suggestions.**

The aforementioned points we have raised in this letter are all applicable to question 21, clearly outlining our position that non-profits should remain exempt from inclusion under PIPA legislation. We are writing this letter on behalf of our members, but all *Societies Act* groups in Alberta have a complicated range of compliance matters required of them. Simply put, it is difficult for voluntary organizations to keep up with increasing demands.

To further make this point, “common” compliance matters include, but are certainly not limited to: understanding a board’s fiduciary responsibilities; bylaws versus policy development; membership accountability in non-profits; Society Annual Return filings and bylaw amendments; Canada Revenue Agency filings; differences between incorporated non-profits and registered charities; financial accountability standards of practice; record keeping, retention, and meeting minutes; safeguarding the association through insurance; land use agreements; rental arrangements; membership management; Canada’s Anti-Spam Legislation; labour law; grant requirements and gaming Use of Proceeds; special event or special use licenses and tariffs, etc.

In short, the list of compliance and accountabilities is exhaustive. When there are opportunities like this to consider the impact on a sector that is burdened with the task of navigating complicated compliance matters, the question must be asked: is this next consideration to add regulation to *Societies Act* groups necessary, if the possibilities for education and privacy protection can be managed with a mind towards guidance and not legal regulation?

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The Federation of Calgary Communities believes this can be a matter addressed by promoting education and awareness to organizational networks. We will continue to utilize the guidance from PIPA and other sectoral educators to build on a discussion towards positive change, as opposed to supporting a broad-sweeping application at the legislative level.

**22. Do you have any other suggestions or comments regarding PIPA? Please comment on any topic relevant to PIPA not addressed by this discussion guide.**

The principles of privacy protection are ethically sound and responsible. It is the establishment of regulatory standards, and the way in which privacy protection is applied that needs serious consideration, particularly when networks of organizations are treated similarly in spite of their differences. The private sector, public sector, voluntary sector – all organizational networks have unique typological differences, between each sector, and within their own. The voluntary sector has vastly different typologies among those within the *Societies Act*. The Federation of Calgary Communities recommends that non-profits remain exempt from PIPA, with continued emphasis on the need for education around privacy protection, and the adoption of policy on individual terms.

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Once again, thank you kindly for your consideration in our feedback.

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