Quebec Data Portability Compliance Checklist

Executive Summary

This checklist outlines steps for compliance with new data portability requirements introduced by Law 25 under the Quebec Privacy Act, effective September 22, 2024.

The Quebec Privacy Act will provide individuals with the right to request that an organization provide them with computerized personal information collected from them in a structured, commonly used technological format. Individuals will also be able to request that an organization provide this information to another person or organization authorized to collect the information.

The right to data portability expands existing access rights under the Quebec Privacy Act (Quebec Privacy Act, s. 27). Amendments introduced by Law 25 ensure that computerized personal information collected from individuals is not only accessible but also usable and transferrable in a standardized format, enabling individuals to move their personal information between organizations more easily. This right is intended, among other things, to make it easier for individuals to switch service providers (CAI, Vos droits, Accéder à vos renseignements personnels).

Data Portability Amendments

Amendments to the Quebec Privacy Act coming into force on September 22, 2024, shown in track change:

> Every person carrying on an enterprise who holds personal information on another person must, at the request of the person concerned, confirm the existence of personal information, communicate it to the person and allow him to obtain a copy of it.
>
> At the applicant's request, computerized personal information must be communicated in the form of a written and intelligible transcript.
>
> Unless doing so raises serious practical difficulties, computerized personal information collected from the applicant, and not created or inferred using personal information concerning him, must, at his request, be communicated to him in a structured, commonly used technological format. The information must also be communicated, at the applicant's request, to any person or body authorized by law to collect such information.
>
> If the person concerned is handicapped, reasonable accommodation must be provided on request to enable the person to exercise the right of access provided for in this division (Quebec Privacy Act, s. 27 as amended by Law 25).

Quebec Data Portability Checklist

1. Policies and Procedures

1.1. Internal Policies and Procedures

- Update internal policies and procedures to include the handling of Quebec data portability requests (Quebec Privacy Act, s. 3.2).
- As part of these updates, identify data within the scope of data portability rights in Quebec (Quebec Privacy Act, s. 27):

In Scope	• "Computerized personal information collected from the applicant."
Out of Scope	• Non-computerized (i.e., paper format) personal information collected from an individual. • Data "created or inferred using personal information concerning" an individual (e.g., user profiles created from web activity analysis). • Personal information collected from third parties or sources other than the individual.

- Ensure that these policies and practices are approved by the PIC (Quebec Privacy Act, s. 3.2).

1.2. External Policies and Notices

- Review external policies and notices to ensure that individuals are informed of the right of access and of the place where and manner in which such a right may be granted (Quebec Privacy Act, ss. 8, 29).

1.3. System PIA Requirement

- When conducting a PIA during the acquisition, development, or overhaul phase of new projects involving an "information system or electronic service delivery system involving the collection, use, communication, keeping or destruction of personal information," ensure that the project allows computerized personal information collected from the person concerned to be communicated to him in a "structured, commonly used technological format" (Quebec Privacy Act, s. 3.3).
    - To do this, an organization can, for example, offer a functionality to download personal information to the applicant in a data-portable format (Gouvernement du Québec, Droit à la portabilité).

1.4. Contracts with Service Providers

- Ensure contracts with service providers require the service provider to promptly refer individual rights requests to the organization and to assist the organization in responding to such requests (Quebec Privacy Act, s. 16).

2. Data Portability Request Process

2.1. Data Portability Request Review and Verification

- Confirm that the request is made:
  - In writing (Quebec Privacy Act, s. 30).
  - To the PIC (Quebec Privacy Act, s. 30).
- Verify that the individual making the request is the person to whom the personal information relates or is such person's representative, heir or successor, person having parental authority, or other person authorized by law to access the personal information, as applicable (Quebec Privacy Act, s. 30).
- Where an individual requests information to be disclosed to a third party, confirm that the party is a "person or body authorized by law to collect such information" (Quebec Privacy Act, ss. 4, 5, 27; CCQ, art. 37; Quebec Access Act, s. 64).

2.2. Response Timeline

- Ensure to respond promptly and not later than 30 days after the date the request is received (Quebec Privacy Act, s. 32).
- If an extension is needed, seek authorization from the CAI within 30 days of receiving the data portability request (Quebec Privacy Act, ss. 32, 46).
- If wishing to disregard or limit the scope of the applicant's request, seek authorization from the CAI within 30 days of receiving the data portability request (Quebec Privacy Act, ss. 32, 46).

2.3. Fee Requirements

- By default, comply with access requests free of charge (Quebec Privacy Act, s. 33; CCQ, art. 38).
- Where a "reasonable" fee maybe charged for a request for a transcription, reproduction, or transmission of information, inform the requester of the approximate amount in advance (Quebec Privacy Act, s. 33; CCQ, art. 38).

2.4. Assistance Identifying Information

- Assist the individual if the request is insufficiently precise or if the individual requires assistance in identifying the information sought (Quebec Privacy Act, s. 30).

2.5. Reasonable Accommodation

- Provide reasonable accommodation to enable the right of access when requested by individuals with disabilities (Quebec Privacy Act, s. 27).

2.6. Mandatory and Discretionary Exemptions / Exemptions Requiring CAI Authorization

- Consider whether access restrictions under the Quebec Privacy Act apply such that the organization must or may refuse to comply with an individual's access request (Quebec Privacy Act, § 2).

- Consider whether fulfilling the request raises "serious practical difficulties" (e.g., significant costs to fulfill the request, complexity of fulfilling the request) (Quebec Privacy Act, s. 27; Gouvernement du Québec, Droit à la portabilité).
- Where determined to be appropriate, seek authorization from the CAI to:
    - Disregard applications that are "obviously improper" due to their number or their repetitious or systematic nature, or applications that, in the opinion of the CAI, are not consistent with the object of the Quebec Privacy Act (Quebec Privacy Act, s. 46).
    - Limit the scope of the applicant's request (Quebec Privacy Act, s. 46).

2.7. Form, Content and Format of Response

- Ensure that the response meets prescribed form requirements, namely that it is:
    - Provided by the PIC (Quebec Privacy Act, s. 32).
    - Provided in writing (Quebec Privacy Act, s. 32).
- Ensure that information provided meets prescribed format requirements, namely that it:
    - Provides data in a "structured, commonly used technological format" (Quebec Privacy Act, s. 3.3).
    - Communicated in the form of a "written and intelligible transcript" (Quebec Privacy Act, s. 27; CCQ, art. 38; IT Act, s. 23).
    - The individual's wishes as to the medium or technology to be used must be taken into account, unless substantial practical difficulties would be involved, owing in particular to high cost or the information transfer required (IT Act, s. 23).
- Where refusing a request, ensure that the response includes prescribed content requirements, namely that it includes:
    - Reasons for any refusal to grant a request (Quebec Privacy Act, s. 34).
    - A reference to the provision of law on which the refusal is based (Quebec Privacy Act, s. 34).
    - The remedies available to the applicant under the Quebec Privacy Act:
        - The individual's right to file an application to the CAI for the examination of a disagreement concerning access or the rectification of personal information (Quebec Privacy Act, ss. 34, 43).
        - The time limit for exercising the remedies (i.e., within 30 days of the date of the response or within 30 days of the date on which the response period expires) (Quebec Privacy Act, ss. 34, 43).

2.8. Assistance Understanding Refusal

- Where refusing a request, and where the applicant so requests, the PIC must also help the applicant understand the refusal (Quebec Privacy Act, s. 34).

Key Terms and Concepts

CAI: Commission d'accès à l'information du Québec (CAI, Fonctions et pouvoirs de la Commission).

Computerized: The Quebec Privacy Act applies to personal information irrespective of its medium or form in which it is accessible, whether written, graphic, taped, filmed, computerized, or other (Quebec Privacy Act, s. 1). However, data portability rights in Quebec only apply to computerized personal information (i.e., personal information processed in electronic form, to the exclusion of paper files) (Gouvernement du Québec, Droit à la portabilité).

Data Portability: Data portability is the communication of computerized personal information collected from an individual in a structured and commonly used technological format (Quebec Privacy Act, s. 27; CAI, Responsabilité des entreprises).

Personal Information: Personal information is any information which relates to a natural person and directly or indirectly allows that person to be identified (Quebec Privacy Act, s. 2; CAI, Qu'est-ce qu'un renseignement personnel?).

PIC: The Person in Charge is the person responsible for the protection of personal information in the custody or control of an organization (e.g., a Privacy Officer) (Quebec Privacy Act, s. 3.1; CAI, Responsabilité des entreprises).

PIA: Under the Quebec Privacy Act, the conduct of a Privacy Impact Assessment must be proportionate to the sensitivity of the information concerned, the purposes for which it is to be used, the quantity and distribution of the information and the medium on which it is stored (Quebec Privacy Act, s. 3.3; CAI, Réaliser une évaluation des facteurs relatifs à la vie privée – Guide d'accompagnement à la démarche et à sa documentation – Avril 2024).

Structured, commonly used technological format: A format is "structured and commonly used" when commonly used software applications can easily recognize and extract the information contained therein. Organizations must favour formats that are suited to the requested information, open, and interoperable. Generally, open formats like CSV, XML, or JSON are suitable for portability. In contrast, a format that is difficult to process, such as an image, a PDF, or a format requiring the acquisition of software or a paid license, is not considered a structured and commonly used technological format (Quebec Privacy Act, s. 27; Gouvernement du Québec, Droit à la portabilité).

Relevant Statutes

CCQ: *Civil Code of Québec*, chapter CCQ-1991.

Law 25: Bill 64, *An Act to modernize legislative provisions as regards the protection of personal information*.

Quebec Access Act: *Act respecting Access to documents held by public bodies and the Protection of personal information*, chapter A-2.1.

Quebec Privacy Act: *Act respecting the protection of personal information in the private sector*, chapter P-39.1.

IT Act: *Act to establish a legal framework for information technology*, chapter C-1.1.