Commission d'accès à l'information du Québec

2023-1 Guidelines – Criteria for Valid Consent

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October 31, 2023

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Overview

Who are these guidelines for?

These guidelines are intended for public and private organizations that must obtain the consent of individuals in order to use or disclose their personal information. For example:

You would like to use or disclose personal information for a given purpose.

You have determined that you need the consent of the person concerned to use or disclose their personal information.

You obtain the consent of the person concerned.
8 validity criteria

These guidelines will help you meet the 8 criteria

Purpose of these guidelines

- ✓ Facilitate understanding of the criteria for obtaining valid consent
- ✓ Clarify the organizations' obligations in obtaining valid consent
- ✓ Identify best practices that promote respect for individuals' right to privacy

What these guidelines do not contain

- × Consent to disclose non-personal information, such as technical, financial or trade secret information
- × A detailed description of situations where organizations need to obtain consent
- × Exceptions that permit the use or disclosure of personal information without consent. The validity criteria do not apply in such a case.

What the guidelines contain

- → A glossary of key concepts
- → An overview of consent and the obligations of organizations
- → A detailed description of the 8 consent validity criteria
- → Examples to help understand the criteria

Legislation and regulations take precedence over these guidelines

In case of doubt or conflict with these guidelines, legislation and regulations always take precedence.

Consent provides individuals with control over their personal information

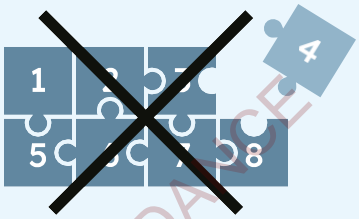
By default, personal information is confidential to protect the privacy of individuals. Consent provides the persons concerned with control over the use and disclosure of their personal information. This means that they agree with what is done with their information.

For their part, organizations must meet their legal obligations to protect personal information. This includes the requirement to obtain valid consent from the persons concerned. Organizations should document such consent and the elements supporting its validity.

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The 8 consent validity criteria

For consent to be valid, organizations must make sure that it meets the 8 criteria specified in legislation. The 8 criteria are interrelated and are all important. If one of them is not met, there is no valid consent.



1. Consent must be **clear**. It must be evident and given in a manner that shows the actual will of the person concerned Consent must at times be explicit, i.e., given using a positive statement or action that only indicates consent. Consent can also be implied.

2. Consent must be **free**. It must involve real choice and control by the person concerned. This person must be able to make a choice without coercion or pressure. Providing consent should be as easy as not providing it. The person concerned must also be able to withdraw consent at any time.

3. Consent must be **informed**. The person concerned must understand what they are consenting to and what that entails. The organization seeking consent must provide the person with specific information. The organization should mention, for instance, the purpose, the sought-after information, and who will have access to it. Lastly, the person giving consent must be able to do so (e.g., not be incapable or under the age of 14).

4. Consent must be given for **specific** purposes. In other words, the purpose of the use or disclosure of personal information must be defined as precisely as possible.

5. Consent must be **granular**. It must be requested for each purpose. If there are multiple purposes, consent must be sought separately for each purpose. This granularity allows the person concerned to express their will clearly, because they may accept or reject each specific purpose.

6. The request for consent must be **understandable**. It must be presented in plain language, both for the information provided and for the question or statement of acceptance or refusal. The statements should be concise, i.e., use as few words as possible. They should use common terms, without any legal or corporate jargon, as well as the most direct terms possible.

7. Consent must be **temporary**. It must be valid for a limited period of time, i.e., only the time required to accomplish the purpose of the request. The duration limit may be related to a timeframe (e.g., 6 months or 3 years) or event (e.g., as soon as a payment is completed).

8. The request for consent, if made in writing, must be made **separately** from any other information. It must therefore be separate from the terms of use, confidentiality policies, signatures, etc., and must have its own section or interface that can be easily accessed by the person concerned.

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Important note

Personal information must be necessary

By law, personal information must be necessary for the organization's sought-after purpose. This is true at all stages of the personal information life cycle, i.e., collection, use, disclosure, retention and destruction. A person's consent does not authorize a transaction using personal information that is not necessary.

Personal information must be protected

After obtaining valid consent, organizations are responsible for protecting the personal information they hold.

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Glossary

In this document, some simplified terms are used to refer to more complex legal concepts:

Information: refers to personal information, i.e., information about an individual that directly or indirectly identifies that person.

- Examples include a mailing or email address, unique number, geolocation data, photograph, psychological characteristic, etc.

Sensitive information: refers to personal information which, by virtue of its medical, biometric or other private nature, or because of the context of its use or disclosure, generates a high level of reasonable expectation of privacy.

- Examples include a fingerprint, notice of assessment number, diagnosis, etc.

Organization: means any public or private entity to which section 53.1 of the *Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information* or section 14 of the *Act Respecting the Protection of Personal Information in the Private Sector* applies.

- For example, this term includes government departments, educational institutions, government-owned enterprises, small, medium and large businesses of all types, including individuals, etc.

Primary purpose: refers to the purpose for which personal information is collected by an organization. It relates to the provision of a service or product or access to employment. It is stated at the time of collection.

- For instance, to process a customer's payment, a company collects financial information; to process a benefits claim, a public body collects information about an individual's employment.

Secondary purpose: refers to all other purposes pursued by an organization.

- For example, to conduct a market study, a company would like to reuse information it already has; to facilitate administrative proceedings with another organization, an organization would like to share information about a person's file.

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Introduction

A. These guidelines are intended to clarify the validity criteria for consent

A.1. Purpose of the guidelines

These guidelines cover the **validity of the consent** that organizations must obtain from a person concerned by personal information. These criteria are stipulated in:

a. Section 53.1 of the *Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information* (**ARA**);
b. Section 14 of the *Act Respecting the Protection of Personal Information in the Private Sector* (**ARP**).

The guidelines in this document concern the application of these two sections, unless other sections are explicitly mentioned. In these cases, they are cited at the bottom of the page.

A.2. Intent and thrust of the guidelines

The Commission d'accès à l'information (**CAI**) is in charge of drawing up guidelines to help apply the ARA and ARP, which are under its responsibility[1]. The aim of this document is therefore to clarify the obligations of organizations in obtaining valid consent while taking into account overall legislation and case law.

The guidelines do not have the force of law; the legislation and regulations take precedence at all times.

A.3. Obligations and best practices

These guidelines also identify best practices that promote respect for individuals' right to privacy. CAI distinguishes them from obligations throughout the text:

a. When referring to **obligations**, CAI mainly uses **the verb "must"**;
b. When encouraging the adoption of **best practices**, CAI uses **verbs or terms associated with recommendations or possibility** ("should," "could").

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[1] ARA, section 123.

A.4. Exclusions

These guidelines do not apply to consent to disclose *non-personal information,* such as technical, financial or trade secret information[2].

Nor are they intended to provide specific guidance on *situations where consent is required or not*, except for the general information provided in section B. The guidelines focus on the criteria to be met when consent is required by law.

A.5. Examples

Examples are provided in the second half of the document to illustrate the content of the guidelines. They are fictitious, but may be based on actual practices. Since they aim to show specific aspects of the text – such as a single validity criterion – they present situations that have been intentionally simplified. In reality, each context requires specific analysis. These examples can therefore be considered tools. When a potentially non-compliant situation is described, CAI proposes a course of action, which should not be considered as the only possible solution.

While examples are generally associated with a given public or private sector, they can inspire organizations in the other sector. The following icons and colours are used to identify them:



A.6. Other legislation

Organizations are responsible for knowing and meeting their consent obligations contained in other sector legislation, such as the *Act Respecting Health Services and Social Services*, or general legislation, such as the *Civil Code of Québec*. Moreover, the fact that an organization obtains valid consent does not release it of its other legal obligations with respect to the protection of personal information.

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[2] ARA, section 23, section 24, section 25 and section 49.

B. Consent provides individuals with control over their personal information

B.1. Right to privacy and control

Individuals have a fundamental right to privacy. By default, personal information is therefore confidential. Everyone may exercise control over the collection, use and disclosure of their information.

B.2. Control mechanisms

The law provides that such control is exercised:

a. Through rights (to access, correct, etc.) or recourse (complaint to an organization or CAI, etc.). To ensure that individuals can exercise them with full knowledge of the facts, the legislation provides for **transparency** obligations for organizations;
b. Through **consent**. Associated with personal independence, consent implies that individuals agree to certain actions involving their information. To comply with legislation and thus be **valid**, consent **must** meet certain criteria (see page 9).

B.3. Consent and collection

Unlike other Canadian or international privacy laws, ARA and ARP do not regulate the collection of information through consent, except in special cases. To **collect** information, an organization **must** therefore:

a. Clearly identify the purposes for which the information is being collected and meet the criterion of **necessity**[3];
    i. In particular, the sought-after purposes must be important, legitimate and real. Collection must be proportionate to these purposes, i.e., rationally associated with them, limited as much as possible, and much more useful to the organization than detrimental to the individuals concerned;
b. Comply with its **obligation of transparency** by providing accurate and complete information to the persons concerned when the information is collected from them.[4]

B.4. Collection involving technological functions

When an organization collects information using technology that has features that identify, locate, or profile the person concerned, these functions **must** be disabled by default[5]. In addition, legislation imposes an additional requirement of transparency. The organization therefore **must** inform the persons concerned:

[3] ARA, section 64; ARP, section 5.
[4] ARA, section 65 and following; ARP, section 8 and following.

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a. Of the fact that it uses such technology;
b. Of the methods available to enable the identification, location or profiling functions.

The person concerned must therefore take positive action to do so.

See examples B-a B-b

B.5. Special cases

In certain special cases, an organization **must** obtain valid consent in order to:

a. Collect information **from a minor under 14 years of age** that concerns that person[6];
b. Collect information **from a third party** rather than from the person concerned, with some exceptions, in the private sector.[7]

B.6. Consent and primary purposes

An organization that fully complies with its obligation of transparency when collecting information from the persons concerned may consider that those who provide their information with full knowledge of the facts are consenting to the use and disclosure necessary for the stated primary purposes[8]. Such consent may be withdrawn at a later time (see section 2.3 and section 2.6).

B.7. Consent and secondary purposes

Except in special cases, an organization **must** obtain valid consent:

a. To **use** information for secondary purposes[9];
b. To **disclose** information to a third party[10].

B.8. Consent and necessity

Consent may never override the **necessity** criterion (see section B.3). At all stages of the information life cycle, i.e., collection, use, disclosure, retention and destruction, that information **must** first and foremost be necessary to fulfill the intended purpose. This standard is well established in law[11] and jurisprudence.

See example B-c

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[5] ARA, section 65.0.1; ARP, section 8.1.
[6] ARA, section 64.1; ARP, section 4.1.
[7] ARP, section 6.
[8] ARA, section 65.0.2; ARP, section 8.3.
[9] ARA, section 65.1; ARP, section 12.
[10] ARA, section 53, section 59 and section 88; ARP, section 13 and section 40.

B.9. Time of consent

An organization **must** obtain consent **before** carrying out the associated actions.

B.10. Exceptions to consent

In some cases, ARA and ARP provide exceptions that allow an organization to act without having to obtain consent. Many other statutes also provide for similar exceptions. Where an exception applies, since there is no consent, the validity criteria (see page 9) are not applicable.

B.11. Transparency regarding exceptions

An organization **should** be transparent in describing, in one of the documents it must make public regarding information management[12], the exceptions to consent which it is most likely to use. This practice allows individuals to be informed of these opportunities and to exercise control through their rights and recourses (see section B.1).

B.12. Context for the use of exceptions

To qualify for an exception to consent, an organization **must** ensure that its application conditions are met.

However, the exceptions are discretionary. The organization **should** only use these exceptions if consent is not possible or appropriate. It **could** therefore choose, in certain cases covered by exceptions, to instead use consent, particularly when there is no actual difficulty in obtaining it (e.g., persons are easy to contact, not an emergency).

The following elements may be part of an organization's contextual analysis in determining whether or not it relies on exceptions to consent for certain activities:

a. Consent may sometimes be more beneficial to the organization, such as to facilitate its legal compliance documentation (see section C);
b. Consent may also be withdrawn at a later time by the person concerned (see section 2.6), which adds a means of control over the information;
c. The organization may wish to increase its level of transparency in terms of personal information management.

B.13. Respect for an individual's choice

Consent must allow for real control on the part of the persons concerned. An organization that chooses to use consent for a specific purpose rather than an applicable exception **should** therefore respect the choice of the persons concerned. It **should not**, for the same purpose, go back and instead choose to use that exception only because the persons refused to consent or withdrew their consent.

[11] For example, ARA, section 64, section 65.1, section 67; ARP, section 5, section 12, section 18.
[12] Examples include policies or governance rules or a privacy policy, depending on the circumstances.

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B.14. In case of doubt

If an organization is not certain that an exception applies in a given situation, it **must** instead obtain the valid consent of the person concerned.

C. Organizations must document their practices

C.1. Importance of documentation

CAI would like to stress the importance of organizations documenting their consent practices. Organizations **should** give this issue serious consideration. Documentation helps structure the reflection on privacy. It enables organizations to better justify their actions in the event of a complaint, action allegedly taken without consent, or an investigation. When obtaining consent or the validity of the consent is inadequately documented, there is a risk that CAI or any court may conclude that the consent was not valid or was not obtained in a given situation. A violation of the law could then be found.

C.2. Documenting consent

Where consent is required, an organization **should** document that the consent was obtained (or withdrawn; see section 2.6). However, the organization **must not** collect more information than needed for such documentation. It **should** develop and implement methods appropriate to the context, activities and form of consent (see section 1.2 and section 1.3).

See example C-a

C.3. Documenting the validity of consent

A consent that does not meet the validity criteria is of no effect[13]. Similarly, an organization **should** document the elements that establish the validity of the consent that was obtained. Once again, it is up to the organization to determine the best way of doing so. For example, it **could** retain elements related to the circumstances in which consent was sought or how it was sought (e.g., wording of information provided to individuals, script used by organizational agents over the phone). This documentation makes it easier to attest, in the future, that a practice was consistent at the time consent was obtained.

See examples C-a C-b

C.4. Verification of an individual's identity

Consent is an expression of personal will. An organization **must** ensure that it obtains the consent of the right person, namely, the person concerned or their legal representative, if applicable (see section 3.2). Where there is a legal representative, the organization **must** also verify the capacity of the person who is consenting (e.g., person with parental authority, representative or agent). These verifications **could** include validating certain information, but the organization **must not** retain or collect more information than necessary. The organization **should** aim for a reasonable level of certainty depending on the context, while taking into account, for instance, the intended purposes, the sensitivity of the information, and the nature of its activities.

[13] ARA, section 53.1; ARP, section 14.

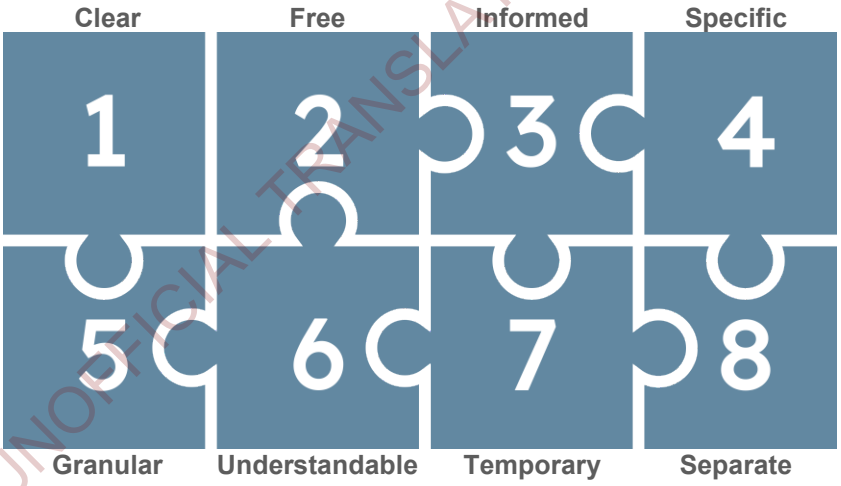
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Consent validity criteria

Valid consent is defined in section 53.1 ARA and section 14 ARP, which contain eight criteria (each text box is a link to a specific section of these guidelines):

> "Consent [under this Act] must be clear, free, informed and be given for specific purposes. It must be requested for each such purpose, in clear and simple language. If the request for consent is made in writing, it must be presented separately from any other information provided to the person concerned. If the person concerned so requests, assistance must be provided to help him understand the scope of the consent requested.
>
> […]
>
> Consent is only valid for the time necessary to achieve the purposes for which it was requested.
>
> Consent not given in accordance with [this Act] is without effect."

The criteria are interrelated. They are all important: if one of them is not observed, the consent is invalid and has no effect.



The first four criteria (clear, free, informed and specific) are fundamental, while the next four (granular, understandable, temporary, separate) address specific aspects of the first four criteria and ensure their full validity. For example, consent must be presented in clear and simple terms to be informed and specific. **Throughout the text, the links between the criteria are specified where relevant**.



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1 Consent must be clear

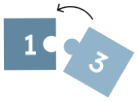
1.1. Clear nature

Consent **must** first be **clear**, i.e., evident and given in a way that shows the actual will of the person concerned. This willingness may be in **explicit** form, but it may be **implicit** in some cases.

1.2. Express consent

Express consent is when the person takes action (or makes a statement) that clearly indicates their agreement. This action or statement is used solely for consent and is **positive**: it indicates acceptance, not refusal. Express consent leaves no doubt as to the person's true will. An "opt-in" also refers to this form of consent.

1.3. Implied consent



Consent is **implied** if it is not expressly stated. This is deduced by the organization through another action taken by the person concerned or through the person's silence/inaction. The person concerned **must** be informed that such action, silence or inaction will be interpreted as consent (see section 3). The person **should** be given valid opportunity to refuse to consent. *Opting out* also refers to this form of consent.

1.4. Ways to obtain clear consent

An organization is free to develop consent mechanisms that are appropriate to its activities, provided they comply with the law. These mechanisms **should** be tailored to the persons concerned, the context and the type of interface being used. Here are some examples of this type of consent:

a. **Express consent:**
   i. Signature of a document;
   ii. Checking a box;
   iii. Affirmative answer to a question;
   iv. Verbal approval;

b. **Implied consent:**
   i. Box already checked that can be unchecked;
   ii. Deduction made in relation to the person's silence or inaction;
   iii. Deduction made regarding another action taken by the person.

See examples 1-a 1-b 1-c

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1.5. Selecting express or implied consent

When an organization has determined that it requires consent, the legislation provides that consent is express in certain cases. In other cases, the organization determines whether express or implied consent is best suited to the context of its activities. The elements presented in the following paragraphs support the analysis process.

1.6. General guidelines

Express consent is **required** when an organization wishes to use or disclose **sensitive information**[14]. It is not required, however, if such use or disclosure is necessary for the primary purpose and is stated at the time of information collection[15] (see section B.6). Note that other Quebec legislation requires that express consent be obtained in certain situations.

Since it does not require any active or positive action, implied consent **should** only be used when the following additional criteria are met:

a. Use or disclosure is not contrary to the individuals' **reasonable expectations,** depending on the context;
b. There is no **risk of serious harm** arising from the intended use or disclosure.

Consent to the use or disclosure necessary for primary purposes (see section B.6) covers many situations where implied consent may be considered appropriate. Cases where implied consent for a secondary purpose is actually appropriate are likely to be less frequent.

See examples 1-d 1-e 1-f 1-g 1-h

1.7. Compliance with all criteria and documentation

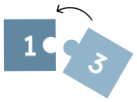
Whether consent is express or implied, it **must** be clear, i.e., evident based on the person's behaviour. The organization **must** also make sure that the other validity criteria are met. Since express consent is formally *requested*, it facilitates compliance with some of the validity criteria, such as the granular nature (see section 5), understandable nature (see section 6) and separate nature (see section 8). It is also easier to document (see section C) and leaves no doubt about the person's true will. For these reasons, organizations **should** favour express consent.

1.8. Consent fatigue

Even if it chooses express consent, an organization **should** take steps to mitigate consent fatigue. We are asked every day to provide consent in a multitude of settings.

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[14] ARA, section 59 and section 65.1; ARP, section 12 and section 13.
[15] ARA, section 65.0.2; ARP, section 8.3.



In the digital world, this is often done by checking a box or clicking a button. While the repetitive nature of these actions may make them lose their meaning, it is important for the person concerned to be aware that they are giving consent, in particular so that they understand the information available to them (informed consent criterion; see section 3).

1.9. In case of doubt

If there is any doubt about the person's true will to use or disclose their information, the organization **should** obtain express consent.



Consent must be free

2.1. Free nature

Consent **must** be **free**, meaning that it involves actual choice and control and must be given without any coercion or pressure. The person concerned **must** therefore be able to exercise their will without being unduly influenced or incur disproportionate harm.

2.2. Equitable mechanisms

It **must** be as easy to give consent as not to give it. These options **should** be presented fairly. Consent mechanisms that do not ensure fair options or that influence choice may invalidate the consent, since it is not truly free. For example:

a. Emphasizing acceptance rather than refusal can render consent meaningless, regardless of how it is done: visual emphasis (colours, font size, etc.), efforts made by the user in terms of numbers of clicks or Web browsing, intentionally ambiguous wording, misleading text, etc.;
b. The fact of repeatedly requesting consent over a short period of time when it has already been refused may violate its free nature. It **should** generally be requested only once for the same purpose, unless warranted by the context or after an appropriate period of time.

See examples 

2.3. Consent as a condition

In principle, consent cannot be free if it is a mandatory condition for access to a service, product or employment. Organizations **must** therefore allow persons to refuse the **secondary purposes** without affecting the original agreement.

However, there are times when the use or disclosure of information is essential to the provision of a service or product or access to employment.

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The use or disclosure is then related to the organization's **primary purpose**. If the organization meets its transparency obligation, individuals consent to the use or disclosure necessary for that primary purpose by providing their information[16] (see section B.6). If the information is not provided by the individuals, the organization cannot deliver the service or product or allow them access to employment, and is therefore entitled to refuse it.[17] An organization **must** ensure that the use or disclosure is necessary under the circumstances.

See examples 2-c 2-d

2.4. Change in purpose

Where an organization pursues a new purpose that requires consent (see section 4.5), such consent may not be free if the organization states that it will no longer provide a service, product or employment to those refusing to provide the consent. In such a case, the organization **should** be able to once again show that this new purpose is necessary to continue the activity (see section B.3 and section 2.3).

2.5. Situations of imbalance

Situations in which there is a power imbalance between an organization and a person concerned may threaten the free nature of consent. This is particularly the case in employer/employee relationships. CAI recognizes that legislation does not provide a ready-made solution in these circumstances. An organization **should** adopt measures appropriate to its setting to mitigate this problem if it requires consent. It may, for example, provide other options on how to achieve the purpose so that a person still has control over their information. In all cases, it **should** pay particular attention to transparency so that the person concerned is as informed as possible and their other rights (complaint, access, correction, etc.) are preserved (see section B.2).

See examples 2-e 2-f

2.6. Withdrawal of consent

Consent can be withdrawn at any time by the person concerned[18]. An organization **should** provide a simple and accessible mechanism for withdrawing consent and **should** inform the persons concerned. The fact that a person must make disproportionate efforts to exercise this right can undermine the free nature of consent.

See examples 2-g 2-h

[16] ARA, section 65.0.2; ARP, section 8.3.
[17] ARP, section 9.
[18] ARA, section 65; ARP, section 8.

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Consent must be informed

3.1. Informed nature

Consent **must** be **informed**, i.e., specific and based on appropriate knowledge. An organization **must** ensure that the person concerned is aware of and understands what they are consenting to and what that entails. If the organization does not provide the information necessary to do so, the person does not have true control and the consent is invalid.

3.2. Person's capacity

To be informed, consent **must** first be given by a person who is able to compel themselves when consent is being made.[19] For example, consent given by an incapable person or a person under the age of 14[20] is not valid. In these circumstances, consent may, however, be given by a representative, such as the person with parental authority or the agent.

3.3. Parallel between the obligation for transparency in information collection and the informed nature

A parallel should be drawn between the information that an organization **must** provide to the persons concerned at the time of the collection[21] (see section B.3) and the information that it **should** provide in order for the consent to be informed. The legislation stipulates that persons who provide their personal information after receiving the information required by law at the time of the collection consent to the use and disclosure necessary for the stated primary purposes[22] (see section B.6). Legislators believe that this information enables the person concerned to make an informed decision about their personal information.

Therefore, to ensure that consent is informed, an organization **should** provide the information presented below, which is based on section 65 ARA and section 8 ARP, with any necessary adjustments, in keeping with the situation. **Subsections 3.4 and 3.5 are therefore not guidelines for the application of these sections where collection is involved.**

3.4. Information to be provided

For an individual to make an informed decision, an organization **should** generally provide the following information when obtaining consent:

a. **Who?** The organization on whose behalf consent is being requested;
b. **Why?** Purpose of the consent request;

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[19] *Civil Code of Québec*, Article 1398.
[20] ARA, section 53.1 and section 64.1; ARP, section 4.1 and section 14.
[21] ARA, section 65 and section 65.0.1; ARP, section 8 and section 8.1.
[22] ARA, section 65.0.2; ARP, section 8.3.

c. **What?** Information involved, or at least categories of information, as a reminder if some time has elapsed since the information was collected;
d. **From whom?** If applicable, name of third parties or third party category outside the organization from whom the organization will collect the information or for whom the organization will collect the information;
e. **How?** Means of using or disclosing information (e.g., mailing, use of fully automated decision);
f. **To whom?** If applicable, name of third parties or third party category outside the organization to whom the organization will disclose the information;
g. **Outside Quebec?** If applicable, possibility that the information may be disclosed outside Quebec:
h. **What rights are involved?** Right to withdraw consent, right of access and right to correct, with details on how to exercise these rights;
i. **Information available to whom?** Categories of individuals within the organization who will have access to the information to achieve the intended purpose;
j. **For how long?** Length of consent validity (see section 7);
k. **Whom to contact if needed?** Contact information for the Privacy Officer, from whom individuals can obtain more information or exercise their rights.

See examples 3-a 3-b

3.5. Accessibility of information – levels

There is a lot of information to provide, which an organization **could** break down into several levels to make it easier for the persons concerned to understand. In determining the number of levels and their content, the organization **should** take various elements into account, such as: context of its activities, expectations of the persons concerned, sensitivity of the information involved, changes that have occurred since the collection of information that may affect the way it is handled, the fact that the information should be accessible upon request, etc.

For example, information can often be prioritized into two levels:

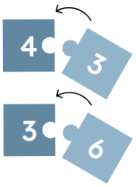
a. The **first level** (e.g., the consent request itself) could include:
    i. **Purpose** (why);
    ii. The **information or categories of information involved** (what);
    iii. Any **third parties** (to whom/from whom);
b. The **second level** could include the other information, including, for instance:
    i. A privacy policy, including the one required by law when a technological means is used to collect information[23];
    ii. An appendix to a form;
    iii. A question mark icon or "Learn More" button next to the consent request;
    iv. Orally, a statement indicating that more information is available upon request.

See examples 3-c 3-d

[23] ARA, section 63.4; ARP, section 8.2.

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3.6. Clarification and clarity of terms being used

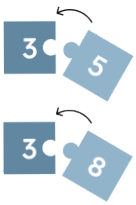


The elements presented above **must** enable specific consent (see section 4) through the use of simple and clear terms (see section 6). An organization **must** therefore avoid vague, unclear or overly complex terms, as well as text that is long or full of legal jargon. These elements prevent the person from fully understanding what they are consenting to.

3.7. Separate information for each purpose

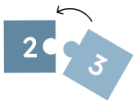
When a request for consent to secondary use or disclosure is made at the time of collection, an organization **must** make sure to provide:

a. The information required to comply with its transparency obligations in relation to collection, including the primary purposes for which the information is being collected;[24]
b. Information relating to other purposes for which consent is sought. However, the organization **must** do so **separately** (see section 5, and section 8 for requests made in writing). Thus, there is a link between the informed nature of consent and the amount of information given simultaneously to the person concerned: presenting the information separately, especially if it relates to consent, reduces the risk of confusion.



See example 3-e

3.8. Subsequent availability of information



Since free consent may be withdrawn, the organization **should** provide the relevant information again to the person concerned upon request. This would allow the person to review their decision after having provided consent, if required (see section 2.6). An organization **could** deploy means to make the information available by default for future reference, such as on a website.

3.9. Duty to assist

An organization **must** provide assistance to those seeking help in understanding the scope of the consent being requested. The organization is responsible for providing solutions in this respect, based on the context of its activities. For example, the organization **could** provide a toll-free number or live online chat to reach a manager, or create a dedicated email address where questions can be sent.

See example 3-f

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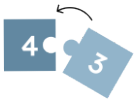
[24] ARA, section 65 and section 65.0.1; ARP, section 8 and section 8.1.

4 Consent must be specific

4.1. Specific nature

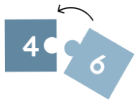
Consent must be **given for a specific purpose**, i.e., there must be a specific and defined purpose.

4.2. Relationship to informed nature



This criterion is strongly related to informed consent: a person can only consent if they are able to understand exactly what is being asked of them.

4.3. Specificity of terms



An organization **must** ensure that it uses terms that adequately describe the purposes for which the consent is being requested. Vague, broad or non-specific terms threaten the specific nature of consent, and hence its validity (see section 6).

See examples 4-a 4-b

4.4. Restriction of use

To comply with the specific wishes of the persons concerned, an organization **must** use consent only for what is authorized. Expressed consent is restrictive: it is applicable solely to the specified purposes or for specified third parties.

See example 4-c

4.5. New purpose, new consent

When an organization wishes to use or disclose information for new purposes, it **must** obtain new consent, unless a legal exception applies (see section B.10 and following).

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5 Consent must be granular: it is requested for each sought-after purpose

5.1. Granular nature

Consent **must** be **granular**, i.e., **requested for each sought-after purpose**. Granularity refers to material with distinguishable parts.

5.2. Relationship to free, clear and specific nature

2 5 1 5 4 5

Granularity ensures that consent is truly free. This is not the case if the person must authorize multiple purposes or third parties to whom the organization discloses the information simultaneously, since the person's only choice is to refuse or accept en masse. Similarly, granularity ensures that the person clearly expresses their wishes for each specific purpose.

5.3. Nuances of consent

To allow the persons concerned to choose in a granular manner what they consent to or do not consent to, an organization **must** inform them of each purpose and, with respect to disclosure, list the third parties or categories of third parties who will be receiving the information. The organization **must** then allow the persons to state whether they agree or not separately for each purpose as well as for each third party or categories of third parties involved. It is not a question of duplicating all the elements relating to consent (e.g., increasing the number of forms, providing the same information multiple times); the organization **must** only adapt its method of obtaining consent (see section 1.4) for granularity purposes.

5 1

See examples 5-a 5-b

5.4. Granularity and implied consent

5 1

Since implied consent does not involve any active and positive actions (see section 1.3), it is more difficult for such consent to be granular (see section 1.7). To avoid this problem, an organization that uses implied consent **should** generally ensure that the consent only pertains to a single purpose.

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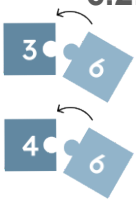


The request for consent must be understandable: it is presented in simple and clear terms

6.1. Understandable nature

The request for consent **must** be **understandable**, i.e., presented in **simple and clear terms**, both for the information and the statement indicating acceptance or refusal.

6.2. Relationship to informed and specific nature



The purpose of this criterion is to ensure that consent is informed, but also to prevent the organization from interpreting consent too broadly (specific nature of consent). There are various elements that can simplify and clarify the statements for the persons concerned, including those presented in the following sections[25].

6.3. Conciseness

The statements should be concise, i.e., use as few words as possible while remaining clear. An organization **should** avoid superfluous words, complex structures, and too much circumlocution. Overly long sentences or text hinder the understanding of the persons concerned.

See example 6-a

6.4. Simple vocabulary

An organization **should** use simple terms, namely, terms that are accessible to the persons concerned. It **should** favour common terms, without any legal or corporate jargon.

See example 6-b

6.5. Clarity of intent

An organization **should** use the most direct terms possible in its request for consent, both in the way the consent is presented and in the wording of the options available to the person. Precise terms prevent confusion about what the person must do and preserve the legal meaning. Similarly, the organization **should** avoid using terms that express uncertainty or assumptions (e.g., conditional verbs), unless it can demonstrate why it must do so.

See example 6-c

[25] The Web writing principles based on the use of clear and simple language of the Québec government's design system can be a useful resource.

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6.6. Adaptation

An organization **should** tailor the information to the target audience. To do so, it **should** take into account the perspective and profile of the persons concerned. They do not always have knowledge about their privacy rights and are not necessarily familiar with the organization's activities. The organization **should** therefore adapt the terms being used so that the information can be reasonably understood by most of the persons concerned.

See examples 6-d 6-e



Consent must be temporary: it is only valid for as long as it is required

7.1. Temporary nature

Consent **must** be **temporary**, i.e., **valid for a limited period of time**. It is only valid for the time required to achieve the purpose for which it was requested. Therefore, it is no longer valid once these purposes have been met.

7.2. Determination of duration

The time limitation is associated with the intended purpose. It can be considered met based on one of the two following elements:

a. **Time**: after a period of 30 days, one year, six years, etc.
b. **An event**: when an event occurs (e.g., as soon as a payment has been made, a person leaves their job, a contract ends).



An organization **must** define ahead of time how long it will take to achieve the purpose. It **should** inform the persons concerned (see section 3.4). The time limit helps make consent specific (see section 4).

See example 7-a

7.3. Distinction between consent validity period and retention period

The duration of the validity of consent is a different concept from the information retention time. The end of the validity of consent does not always occur at the same time as the destruction of the information.

The length of time an organization can retain information depends on the purposes involved, as well as the laws that apply to it.[26] For example, a number of public bodies must comply with the *Archives Act*[27], financial players have retention obligations under sector-specific legislation, and professionals must keep their records in accordance with regulations pertaining to their field.

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7.4. Transparency in relation to long-term consent

When an organization requests consent for a very long period of time, it **should** pay close attention to transparency on an ongoing basis. It **could** remind the persons concerned, at appropriate intervals, that it is using or disclosing their information based on consent. It **could** provide references to up-to-date information on this situation (see section 3.8) and remind the persons concerned that they may withdraw their consent at any time. The organization **could** also disseminate this information through an easily accessible method (e.g., a website).



8 The request for consent must be separate: it is submitted separately when made in writing

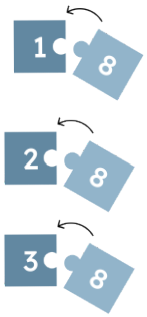
8.1. Separate nature

If the request for consent is made in writing, it **must** be **presented separately from any other information**. It **should** therefore be separated from the terms of use, privacy policies, requests to confirm the validity of the information being provided, agreements, signatures, etc. It **could** have its own section or interface (e.g., section of the form, window in an application), thus making it easily accessible to the person concerned.

See examples 8-a 8-b

8.2. Relationship to other validity criteria

The separate nature of the request for consent is interrelated with other consent validity criteria, including:



a. **Clear and free nature:** consent is not clear if it is expressed by an action that can also refer to something else, such as the receipt of information or the validity of the information being provided, since the intentions behind the action then become one and the same (see section 2.3). Nor is the consent free, since a refusal is difficult to express under these circumstances;
b. **Informed nature:** separate requests for consent help to limit the amount of information provided simultaneously, making it easier for the person concerned to understand.

See examples 8-a 8-b

[26] ARA, section 73; ARP, section 23.
[27] CAI is not responsible for overseeing the enforcement of this Act.

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Examples

As mentioned in section A.5, the following examples are intended to illustrate the guidelines. They are fictitious, but may be based on actual practices. Since they aim to show specific aspects of the text – such as a single validity criterion – they present situations that have been intentionally simplified. In reality, each context requires specific analysis.

These examples can therefore be considered tools. When a potentially non-compliant situation is described, CAI proposes a course of action, which should not be considered as the only possible solution.

While examples are generally associated with a given public or private sector, they can inspire organizations in the other sector.

Each example contains one or more clickable links to the relevant subsection(s) in the guidelines.

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Examples related to the introduction

Example	Relevant subsections
Example B-a Private sector A dating application allows users to determine a somewhat large radius around their location to filter potential partners based on their proximity. When users sign up, the application presents the various information required by law when collecting information. A notice informs users that the app includes a location feature, which is disabled by default. **To access it, users must enable geolocation on their mobile device and allow the app to access it. The app informs users of how to do so.**	Section B.4
Example B-b Private sector A magazine's website offers personalized article recommendations based on the readers' interests, inferred by an artificial intelligence algorithm. The information used for the inference (e.g., pages viewed, clicks, browser language, time spent on each page) is collected using cookies placed on the reader's device. Since this technology enables profiling, **the magazine displays a window at the first visit to the site and provides the persons concerned with the information required under the law. It then tells them how to activate the cookies.**	Section B.4

	Example	Relevant subsections
Private sector	**Example B-c** At its general meeting, a condominium corporation passed a unanimous resolution to install surveillance cameras as a preventive measure to prevent vandalism. The cameras are positioned at an angle that allows the front door of each unit to be videotaped. Despite the condo owners' consent, the fact of capturing images everywhere in the building may not be proportional to the security objective being pursued. The invasion of the privacy of the condo owners and their guests is significant, since the angle of the cameras allows all comings and goings to be recorded. Under these circumstances, the installation of surveillance cameras by the condominium corporation may not meet the necessity criterion. **Consent would not be sufficient to make it comply with the law. To ensure compliance, the condominium corporation could reassess the need for such video surveillance, such as through a privacy impact assessment. The corporation could consider adjusting the camera angles to record only the building's main entrance and exit doors to limit the invasion of privacy.**	Section B.8
All sectors	**Example C-a** An organization has a policy and procedures related to their customers' consent regarding the disclosure of their information. **In an effort to document the consent while only collecting the information needed for that purpose, the organization namely provides that any verbal consent obtained over the phone must be entered in the file of the person concerned. The collecting agent must also note the person's name, the date and the time.** In recent years, the organization has also updated its telephone calling scripts three times. Each time, it kept a copy of the previous versions. **If required, this would make it easier to prove that the consent obtained during the period when a previous version of the scripts was used was truly informed.**	Section C.2 Section C.3
Public sector	**Example C-b** A government-owned enterprise providing digital services frequently updates its online consent forms. Each time, it stores the previous version in its archives. Each version of the form saved in such a way includes a reference to the period during which it was used. **This practice allows the government-owned enterprise to keep a record of the elements used to assess the validity of consent obtained during a prior period. The archived forms could thus be useful in the event of an inspection, for example.**	Section C.3

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Examples related to the clear nature

	Example	Relevant subsections
Public sector	**Example 1-a** A public body employee provides services to persons with motor difficulties, most of whom are unable to write or use touch screens. To validate financial assistance, the employee must disclose information from their file to a government department. The organization's governance rules exclude the use of consent exceptions when, in practice, the consent can be easily obtained (e.g., when a small number of individuals is involved). The employee uses the express consent of the persons concerned to disclose the information. **To take into account the specific characteristics of the clients to whom the services are being provided, the employee asks for consent verbally at their next meeting with the persons concerned. The employee enters the date, time and details of the consent in the clients' file.**	1.4
Private sector	**Example 1-b** A manufacturer sells an online educational toy created for children aged 5 to 8. The toy can record the child's first name and measure on a weekly basis the progress of the child's responses to questions relating to letters and numbers (e.g., correct or incorrect answer, response time). These results are then available to parents on a secure web portal. The manufacturer must obtain the parents' consent to collect the information from the children. When the toy is set up, it gives the parents auditory instructions. **To consent to the collection of information from their child, the parents are asked to log on to the web portal to check an acceptance or refusal box. This mechanism allows the manufacturer to obtain express consent from the parents.**	1.4
Public sector	**Example 1-c** To respond more effectively to requests from the public, an organization would like to design an artificial intelligence system (AIS) for prioritizing files, which it plans to develop using data on the use of its services over the past three years. The organization's Access to Information and Privacy Committee, upon completion of the Privacy Impact Assessment, believes that express consent is required to use the information for this new purpose. The organization nonetheless decides to send an email to the persons involved informing them of the new use, while indicating that they can contact the organization's privacy officer to withdraw their consent to this use. **This inference of consent, based on the silence or inaction of the persons who will not be contacting the organization to withdraw it, does not provide an opportunity for a positive act of acceptance.**	1.4

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Example	Relevant subsections
Therefore, it does not allow express consent to be obtained, but rather implied consent. To comply with the committee's objectives, the organization could, for instance, have asked citizens to give their consent through a personalized Web link associated with their file.	
Public sector **Example 1-d** An organization that pays out benefits to persons with disabilities has sensitive information about their health and financial situation. As part of a provincial conference on the integration of persons with disabilities, the organization would like to produce case reports on the experiences of its benefit recipients in order to present them to participants. However, when collecting the information to pay out the benefits, the organization made no mention of this secondary use. **In order to use the information of the benefit recipients in question, the organization must obtain their express consent, since the information is sensitive. For the consent to be expressed unequivocally, the organization could develop a free-standing form and forward it to the beneficiaries for their signature.**	1.6
Private sector **Example 1-e** A massage therapy clinic is organizing a series of health and wellness conferences in conjunction with other care providers. The owner would like to send out personalized invitations to clients. The clinic is considering using their health and medical history information, which was collected when their file was created, to target certain clients and propose conferences to them. **However, the clinic may not use sensitive information for this secondary purpose without express consent. If express consent from each client is too difficult to obtain, the owner could instead choose to advertise the conferences in the clinic newsletter that is already being sent to clients who have agreed to receive event-related news.**	1.6
Private sector **Example 1-f** After a series of break-ins, an explosives manufacturer would like to reinforce access control at its reagent storage site to limit it only to authorized personnel. The company is considering acquiring a biometric hand geometry recognition system. Following a privacy impact assessment based on the context of its operations, the company has concluded that use of this technology meets the necessity criterion in this situation.	1.6

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Example	Relevant subsections
Since the system is based on biometrics, **the company recognizes that it requires express consent and creates a consent** form[28]**. Employees who are willing can sign it and those who decline can use an electronic access card system.**	
Example 1-g An elementary school has an after-school photography introductory course for grade 5 and 6 students. Parents confirm their children's registration by paying the associated fees. In November, the registered students take part in a portrait workshop and take each other's pictures. Proud of the result, the instructor selects five photographs of children and sends them to the school administration for publication on the school's "parent portal," highlighting the activities proposed by the school and the children's progress. Both believe that the parents are in agreement with the photographs being released, since they were informed of the portrait workshop and the "parent portal" is secure and accessible only to parents of students. **This implied consent may not be valid under these circumstances. The parents likely do not reasonably expect that their children's portraits will be made available in digital form to hundreds of parents without their explicit consent. Given such a wide release, the children's photographs could be considered sensitive, and the risk of serious harm arising from their distribution should be assessed. For these reasons, it would have been better for the school to have chosen express consent, and it could have sent out an electronic consent form to the parents concerned through the portal.**	1.6
Example 1-h An appliance rental company receives a request to rent a refrigerator for 48 months. The automatic acknowledgement of receipt sent to the requestor mentions that the company can provide financing at a low rate for the rental period following a credit check by a personal information officer, whose name is mentioned in the email. In a separate section, the email states that unless the requestor indicates otherwise, the company will disclose the necessary information on the requestor's identity to the agent three days later. Since the requestor did not respond, the company proceeded to run a credit check for financing, which affected the requestor's credit score. The requestor submitted a complaint to the company while mentioning that he had wanted to pay for the rental outright without any financing.	1.6

Public sector

Private sector

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[28] Section 44 of the *Act to Establish a Legal Framework for Information Technology* requires that express consent be obtained to verify or confirm an individual's identity through a process that captures biometric features or measurements.

Example	Relevant subsections
In this situation, the company could not use implied consent for the credit check since it was contrary to the reasonable expectations of the requestor, who had not asked for financing, and caused them significant harm by negatively affecting their credit score. The company should have used a method that involved obtaining express consent to request a credit check.	

Examples related to the free nature

Example	Relevant subsections
Example 2-a A municipality has an app that can be used to report various problems related to the maintenance of public spaces (e.g., snow removal, waste collection). To create an account, users must provide an email address, which serves as an identifier, along with a postal code to initialize the area displayed by default on the maps in the app. Users can then access all the services through the actual app and view the progress of their reports. Their email address can also be used to send them updates on the status of road works in their area. A window opens up to collect the consent. **Users are presented with two buttons, "I accept" and "I decline," making it equally easy for them to give consent or not. In addition, these buttons are next to each other, in the same colour and font size. By ensuring that the visual display of the choices is fair, the municipality further promotes the free nature of the consent that is obtained.**	2.2
Example 2-b A clothing store's website allows its customers to set up an account for their online purchases. At each login, an alert is displayed asking them if they would like to receive the store's weekly newsletter, which contains discounts likely to interest them. It is just as easy for users to agree to this secondary use of their email address as it is to refuse it. However, if a customer refuses, the window will be displayed each time they log in to their account. **These frequent requests for consent, regardless of the customer's prior expressed will, could compromise the free nature of the consent. To avoid this problem, the store could make sure that there is a reasonable interval of time (e.g., a few months) between each request.**	2.2

Public sector

Private sector

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Example	Relevant subsections

Example 2-c

Public sector

In the application for admission that it has prospective students sign, a public university explains that the information that is collected will be used to assess the application and communicate the student status to the appropriate government department, for international students (primary purpose).

However, in a separate section entitled "Foundation," the university requests consent for a secondary purpose:

> "I agree for my name, telephone number, email address, date of admission and field of study to be disclosed to the University Foundation for purposes of philanthropic solicitation. This consent is valid for up to 5 years after graduation.
> ☐ Yes ☐ No."

2.3

The university is presenting this secondary purpose, which is not essential for admission, in the proper way. It leaves the prospective student free to refuse the disclosure, with no impact on the rest of the application. In doing so, the university ensures the free nature of the consent.

Example 2-d

Private sector

When a new car is sold, a dealer uses a form to obtain the information needed to provide financing to the customer. The following is added in the consent section:

> "In signing this contract, I agree for my email address and name to be used to send me promotional offers for the duration of the financing term."

2.3

When questioned by a customer, the business owner says that this is mandatory to receive financing. **This practice does not allow the customer to refuse the secondary purpose, consisting of being sent promotional offers. The dealer is therefore not obtaining valid consent since the consent is not free. This practice should be revised to provide the customer with a real opportunity to refuse to receive promotional offers.**

Example 2-e

Public sector

A regulatory body's inspection team takes action in relation to a food company. At that time, the team leader takes a photo of their employees at work in order to include the picture in the intervention report. A newspaper is interested in the inspection and asks if the photo can be included with their article. The team manager is considering sending an email to the employees concerned to ask if they agree to have their photo included in the inspection report sent to the newspaper along with an article in the next day's edition.

2.5

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Example	Relevant subsections
Given the power relationship between the manager and the employees, the manager must make sure that the drafting of the consent request does not have any negative consequences regarding a potential refusal to disclose information. If the employees feel obligated to consent, the consent cannot be given freely. The manager should therefore be as unbiased as possible in the consent request. It would also be preferable to have each employee respond separately to avoid any pressure from the group.	
Private sector **Example 2-f** A private laboratory decides to acquire a biometric access control system to restrict access to a room containing a machine that uses highly radioactive material. Nuclear safety agency standards require a very high level of security to limit the risk of theft or sabotage of this type of material. In the consent form provided to employees, the company indicates the system's purpose and that employees who do not wish to have their biometric information collected may be otherwise authenticated[29]. They will have to use an access card and then validate their identity with a security guard. Both biometric and traditional access cards continue to be under the control of the persons concerned. **In these circumstances, the company is making reasonable efforts to preserve freedom of consent, despite the employment context: employees may refuse to have their information collected and choose a different authentication method.**	2.5
Public sector **Example 2-g** A university research laboratory is conducting a study on voice recognition. To set up their material, the laboratory team recruits participants who will be recorded while they read through a text. They sign a consent form that includes all the required information and allows researchers to reuse the voice in studies on other specific topics that are indicated on the form, for a period of five years. **Participants who may no longer wish, at a certain point in time, to have their voice used by the laboratory may withdraw their consent simply by sending an email to the laboratory's general address. This withdrawal mechanism is simple and accessible, and does not prevent free consent from being obtained.**	2.6
Private sector **Example 2-h** A music distribution company has an app that allows users to access the albums they have purchased.	2.6

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[29] Section 44 of the *Act to Establish a Legal Framework for Information Technology* requires that express consent be obtained to verify or confirm an individual's identity through a process that captures biometric features or measurements.

Example	Relevant subsections
A window displayed at the first login enables users to select custom recommendations to browse music. An algorithm then creates their profile based on, among other aspects, the songs they listen to, their listening time, and the time of day during which they listen to the music. A user decides to withdraw their consent to have the information used to create personalized recommendations. The user must perform eight clicks in the various setting windows before finding the option to disable the function. **While only one click is required to activate personalized recommendations, it takes a lot more to withdraw consent. In this context, the efforts are disproportionate and undermine the free nature of the consent used by the company. There should be an equivalent number of clicks to consent or decline.**	

Examples related to the informed nature

Example	Relevant subsections
Example 3-a A government employee has a person sign a generic consent form before all the fields have been filled out. The text presented to the person reads as follows, without any information appearing on the blank lines: "I authorize the Government to disclose the following information: _____ to the following persons: _____ for the following purposes: _____." **This type of practice does not enable informed consent to be obtained. The person cannot understand the scope of what they are consenting to if they are not given any information about what the consent pertains to. At the time it is requested, consent must be given with full knowledge of the facts. The Government could instruct employees to always fill out the blank lines before having the forms signed by the persons concerned.**	3.4
Example 3-b Two online shopping platforms collect buyers' consent in order to share their contact information with other companies so that the latter can send them promotional offers. They use different texts: • Platform A: "I agree that [the Company] share my contact information with partners."	3.4

Public sector

Private sector

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Example	Relevant subsections
• Platform B: "I authorize [the Company] to forward my name and email address to its e-commerce affiliates so that they can send me promotional offers." **Platform B's more complete text is more likely to lead to informed consent than the text on platform A, which does not mention the purpose of the disclosure or indicate who its partners are.**	

Example 3-c

Public sector

A school service centre (SCC) is looking to fill a position that involves working with vulnerable persons, and therefore requires a police background check. To do so, the SCC requires the candidates' consent. The employment form contains a section on consent to the disclosure of information to the police department and disclosure to the SCC by the police of the criminal clearance certificate that will be created.

To ensure that the consent is informed, the SCC groups the key information in the consent request:

"SCC X **[who?]** needs your consent to share your identity information **[what?]** with Police Department Y **[to whom?]** to conduct a background check to confirm that you can work with vulnerable persons **[why?]**. This consent also covers disclosure to SCC X by Police Department Y of the criminal clearance certificate **[what?]**. Additional information can be found in Appendix A.
☐ I agree ☐ I refuse."

Appendix A presents the rest of the information (e.g., rights, duration of consent validity, Privacy Officer's contact information) at a second level. The SCC's practice is to avoid overloading the request for consent.

3.5

Example 3-d

Private sector

An accounting firm uses some of its clients' information for secondary purposes through their consent, which is obtained through the electronic record available on its website (collection through a technological means). When consent is being requested, the accounting firm states the purpose of the consent and indicates the categories of information involved (e.g., identity information, financial information). The firm mentions that the consent is valid for the next fiscal year and includes a link to a privacy policy. By clicking the link, users access additional information (e.g., technical means for processing the information, explanations on the right to withdraw consent).

3.5

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Example	Relevant subsections
By placing this information at a second level in a privacy policy that is easily accessible, the accounting firm ensures that an interested party can review it before providing consent, while avoiding overloading the request for consent. The consent is therefore informed.	

Public sector

Example 3-e

To handle reports of harassment, incivility or sexual misconduct, a university collects information from complainants using a digital form. There is an initial general text that explains the purpose of the collection, the persons to whom the complaint must be disclosed to ensure that it is handled in accordance with the policy, and the fact that the information is mandatory to handle the complaint (except for the last and first names, which are optional). The right to access and correct information is also presented. At the end of the form, a separate page is displayed once the person making the report presses "*Next.*" The university is asking for consent to allow the complaint handling office to discuss the complaint with the department's management. It provides specific information relating to the consent. **By providing the new information separately from the collection of the information needed to handle the complaint, the university is favouring informed consent to the disclosure of information.**

3.7

Private sector

Example 3-f

To have online access to the services of an organization that uses third-party authentication services, a person must consent to the disclosure of certain identity information by that third party to the organization. In its privacy policy, which is easily accessible through a link on the consent page, **the organization mentions that it is possible to chat with an agent who can explain the consent being requested. A toll-free number is also provided to allow users to call an agent during business hours. These mechanisms are part of the tools used by the organization to provide assistance to those who need it.**

3.9

Examples related to the specific nature

Example	Relevant subsections

Public sector

Example 4-a

A school obtains parental consent so that the multidisciplinary team can share a child's information with a health facility where the child has recently received additional services. It asks for their consent for "any information" to be disclosed

4.3

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Example	Relevant subsections
"in the future" to "any other person who requires it." **The use of these vague terms compromises the informed nature of the parents' consent, as well as its specific nature. The school could provide:** • **The intended purpose(s) (e.g., "continuously adjust the child's care plan to the child's needs");** • **The categories of information involved (e.g., "information on the child's psychomotor development");** • **The anticipated frequency of the disclosure (e.g., "twice a month");** • **The categories of intended recipients (e.g., "the professionals assigned to conduct follow-ups with the child at health facility X").**	
Example 4-b Private sector A union is seeking the express consent of some of its members in order to use some of the information contained in active grievances to "*improve its processes.*" **This term is vague and detracts from the specific nature of consent because it does allow for a clear understanding of the intended purpose. It should be stated more clearly, depending on the context** (e.g., "to improve training for personnel in charge of grievances," "to drive artificial intelligence to automate certain steps in the grievance process").	4.3
Example 4-c Public sector An intermunicipal board is asked by a company to provide the past year's attendance record of one of its employees, who is interested in a position there. The HR manager for the intermunicipal board contacts the employee in question to obtain the latter's consent to share the file with the future employer, which the employee agrees to. However, the HR manager forwards the employee's *complete* attendance record, which covers four years of service. **In doing so, the HR manager does not observe the specific consent that was obtained, which exclusively pertained to disclosure of the past year's attendance record. The HR manager should have paid closer attention to the period involved. The intermunicipal board could revise its procedures regarding the management of human resources personal information accordingly.**	4.4

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Examples related to the granular nature

Example	Relevant subsections

Example 5-a

Public sector

An organization that funds projects conducts recruitment via a form. It would like to obtain the consent of the persons concerned for two purposes: a) disclosure of the candidate's contact information to a broadcaster for the purpose of promoting projects that were selected; and b) use of the email address to send out a survey. There is a "consent" section where the two requests are made in succession, with one box stating "I accept" and one box stating "I refuse." **In doing so, the organization is compromising the granular nature of consent by requesting a single consent for two purposes. It should be possible for a person to agree to share their contact information for promotional purposes without, however, consenting to the use of their email address for survey purposes, or vice versa.**

5.3

Example 5-b

Private sector

A non-profit organization (NPO) is hosting a gala to present awards for the work of certain practitioners in its field of activity. It collects the candidates' email addresses to inform them of their nomination and the details of the ceremony. It also suggests that candidates agree to actions with three secondary purposes: a) use of their email address to contact them to assess their satisfaction after the event; b) use of their email address to send them the corporate newsletter; c) allow the company designated by the organization to take the official photographs of the winners to keep their email address in order to offer them discounts on other photography services. **In order to observe the granular nature of consent, the NPO has these three purposes in a table that includes a "Yes" column and a "No" column. Candidates may accept or reject each of these three purposes separately:**

5.3

"Do you consent to your address being:	Yes	No
• Used to contact you to assess your satisfaction after the event?	☐ Yes	☐ No
• Used to send you our general newsletter?	☐ Yes	☐ No
• Kept by the company in charge of taking official photographs of the winners to offer you discounts on other services?	☐ Yes	☐ No"

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Examples related to the understandable nature

Example	Relevant subsections
Example 6-a In a consent form related to receiving financial assistance, a government department uses the following form: "I authorize the Government to forward to the rehabilitation service provider, as soon as possible, all of the information related to an account at a financial institution for the payment of my financial assistance, if applicable." Upon reviewing the entire form, the Government changes the wording as follows: "I authorize the Government to forward my bank account information to the rehabilitation centre for payment of my financial assistance." **In this way, it improves the conciseness and clarity of the statement without leaving out any critical information, which promotes the understandable nature of consent.** Public sector	6.3
Example 6-b An organization is requesting consent using the following text: "The Customer consents to the automated analysis by the Company of, including, but not limited to, historical transactional data for the purpose of determining a profile using a machine learning model, with said profile being used by the Company to issue, without formally committing to it, and subject to its existing policies and procedures, personalized discounts on the purchase price of certain products, provided that the Customer complies with the terms of use." **This highly legal and technical text contains several words that are not in common use, as well as several complex sentence structures (e.g., long sentences, parenthetical expressions). It can confuse the person concerned, thus compromising their informed consent. The following text would be simpler and therefore easier to understand**: "**Receive personalized offers –** I authorize the company to use my purchasing history to determine my buyer profile using an artificial intelligence system. The company may choose to send me personalized discount offers in keeping with my profile if I observe the application's terms of use." Private sector	6.4
Example 6-c An organization reviews its procedures for obtaining consent according to a schedule defined in its governance rules. All sectors	6.5

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Example	Relevant subsections
The special committee notes that requests for consent are generally introduced through vocabulary referring to knowledge rather than authorization: "I am *aware* that information X will be used […]" or "I *understand* that information Y will be shared with […]". **To clarify them, the committee amends them so that the verbs clearly refer to consent: "I *consent* to […]", "I *agree* that […]" or "I *authorize* the use of […]".** The committee also notes that in Web interfaces, explicit consent options do not reflect the consent situation (acceptance or refusal): "Next," "Disregard," etc. **On the committee's recommendation, the organization homogenizes the options to present a choice between "Yes" and "No" as often as possible**, or alternatively, "I accept/I consent/I agree" and "I refuse/I do not consent/I do not agree." **With these changes, the organization is moving toward clearer and simpler language and promoting the understandable, informed and free nature of the consent.**	

Example 6-d

Public sector

At the request of an Indigenous nation that is increasing its efforts to revitalize its language, a team of researchers is conducting an in-depth language study among the nation's elders, in partnership with an Indigenous cultural institute. For purposes of data analysis, the elders' words are recorded in different settings (e.g., out on the land, family discussions, craft sessions). Participants are asked to tell a traditional story. The cultural institute would like to ask participants to consent to the recordings of the stories also being released on a section of its website dedicated to the nation's language and the preservation of its intangible cultural heritage. To do so, it uses a French form. However, some of the older participants speak very little French. **In the particular context of this study, to ensure that the request for consent is tailored to them and understandable by them, the cultural institute mandates a bilingual officer to obtain the participants' oral consent and answer their questions, if needed.**

6.6

Example 6-e

Private sector

A company is marketing a photo sharing app to a wide range of customers, including youth aged 14 to 17. To make sure that its consent procedures are clear to them, the company conducts comprehension tests with a representative group of young people and makes the required changes. **By adapting the text to the teens' literacy level, it increases the likelihood that the text will be understandable to most of the persons concerned, regardless of their age.**

6.6

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Example related to the temporary nature

Example	Relevant subsections
 All sectors **Example 7-a** As part of its recruitment of professionals, an organization asks candidates to provide two references that it can contact to determine how the candidate's work was viewed in previous positions held by the candidate, in addition to information on assessments in the candidate's file. The organization is planning on using an electronic form to send the references. **In an effort to be transparent about the validity period of the consent, the organization informs candidates that consent is valid only until a decision is made about their application. Such a consent is then limited by an event.**	 7.2

Examples related to the separate nature

Example	Relevant subsections

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Example 8-a

At the end of a change of status form from a professional order, the persons concerned must sign the form after four statements:

1. "I acknowledge having read the notice […].
2. I declare that the information provided is complete and accurate […].
3. I consent to the order disclosing my information to the polling firm ABC […].
4. I agree to notify the order of […]. Signature:__"

Private sector

8.1

8.2

The request for consent (third statement) is not presented separately from any other information since it is included with three other statements that are not consents. The clear and free nature of consent is also compromised by this situation. To correct it, the professional order could move the consent request to the beginning of the section, add "Yes" and "No" boxes, and indicate that the signature is only valid for the other three statements:

Example	Relevant subsections
"**Consent.** I consent to the order disclosing my information to the polling firm ABC […]. ☐ Yes ☐ No By signing this form: 1. I acknowledge having read the notice […]. 2. I declare that the information provided is complete and accurate […]. 3. I agree to notify the order of […]. Signature:_____"	

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Private sector

Example 8-b

When finalizing the creation of an account for an online game, players must check a box indicating that they agree with the terms of use, which can be accessed through a hyperlink. However, the form does not contain any references to consent. By clicking the link, players can see that the terms of use include the publisher's privacy policy. The text states that by accepting the terms of use, the player consents to the use of their list of friends, the metadata on their device, their interactions with the game (e.g., clicks, times) and conversations on the public server for purposes of targeted advertising, improvements to the gaming experience, and to fight cheating, for instance. The player also agrees to share their scores on a public platform, along with their screen name and game history in order to stimulate competition in the game.

On the specific issue of consent, the fact that this information is contained in a privacy policy, which is in turn found in terms of use that cover a variety of other topics, compromises the separate nature of consent. In addition, this situation threatens the clear nature (act of consent that cannot be separated from the act of accepting the terms of use), free nature (no granular refusal possible) and informed nature (information difficult to access) of the consent.

8.1

8.2

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