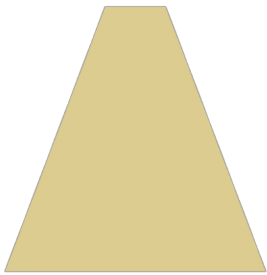


# Guidelines 2023-1 - Consent: validity criteria

Version 1.0

October 31, 2023



This is an unofficial Gowling WLG translation



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# Summary of guidelines

## Who are these guidelines for?


They are intended for public and private organizations that need to obtain consent from individuals to use or disclose their personal information. For example:

You wish to use or communicate personal information to achieve an objective (a goal)

You determine that you need to obtain consent from the concerned individual to use or communicate their personal information

You obtain the concerned individual's consent

8 criteria for validity

 These guidelines will help you respect the 8 criteria

## The objectives of these guidelines

- ✓ Make it easier to understand the criteria for obtaining valid consent
- ✓ Clarifying the obligations of organizations in obtaining valid consent
- ✓ Identify best practices that promote respect for people's right to privacy

## What is excluded from these guidelines

- ✗ Consent to the disclosure of non-personal information, such as technical, financial or trade secret information
- ✗ A detailed explanation of the situations in which organizations must obtain consent
- ✗ Exceptions allowing the use or disclosure of personal information without consent. In this case, the validity criteria are not relevant.

## What do the guidelines contain?

- A glossary of essential concepts
- An introduction to consent and the obligations of organizations → A detailed explanation of the 8 criteria for valid consent
- Examples to help you understand the criteria

## Laws and regulations take precedence over these guidelines

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

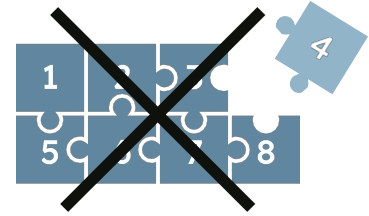
## Consent gives individuals control over their personal information

By default, personal information is confidential in order to protect the privacy of individuals. Consent gives individuals control over the use and disclosure of their personal information. This implies that they agree to what is done with their information.

For their part, organizations must comply with their legal obligations regarding the protection of personal information. This includes the obligation to obtain valid consent from the individuals concerned. Organizations should document this consent and the elements that support its validity.

## The 8 criteria for valid consent

To obtain valid consent, organizations must ensure that it meets 8 criteria listed in the law. The 8 criteria are linked and are all important. If a criterion is not met, the consent is invalid.



- 1** Consent must be **manifest**. It must be obvious and given in a way that demonstrates the real will of the person concerned. Sometimes consent must be express, i.e. given by a positive statement or gesture that indicates consent alone. Alternatively, it may be implicit.
- 2** Consent must be **free**. It must involve genuine choice and control by the person concerned. This person must be able to make a choice without coercion or pressure. Giving consent should be as easy as not giving 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 he or she is consenting to and what this entails. The organization requesting consent must provide specific information. This should include the purpose of the data collection, the information to be collected and who will have access to it. Finally, the person giving consent must be capable of doing so (e.g., not incapacitated or under 14 years of age).
- 4** Consent must be given for **specific** purposes. In other words, the purposes for which personal information is used or disclosed must be defined as precisely as possible.
- 5** Consent must be **granular**. It must be requested for each of the purposes involved. If there are several purposes, consent must be requested separately for each one. This granularity enables the data subject to express his or her wishes clearly, as he or she can accept or refuse each specific purpose.
- 6** The request for consent must be **understandable**. It should be presented in simple, clear terms, both for the information provided and for the question or statement of acceptance or refusal. Statements should be concise, i.e. expressed in as few words as possible. They should use everyday vocabulary, without legal or organizational jargon. They should use the most direct terms possible.
- 7** Consent must be **temporary**. It must be valid for a limited period, i.e. only as long as is necessary to achieve the purposes for which the request was made. The time limit may be linked to a deadline (e.g. 6 months or 3 years) or an event (e.g. as soon as a payment is completed).
- 8** The request for consent must be presented **separately** from any other information, if it is made in writing. It must therefore be separate from terms of use, privacy policies, signatures, etc. It must have its own section or interface, easily accessible by the person concerned.

## Warnings

### Personal information must be necessary

By law, personal information must be necessary for the fulfillment of an organization's purpose. This is true at every stage of the personal information life cycle: collection, use, disclosure, retention and disposal. The consent of an individual does not authorize an operation to be carried out with 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, certain simplified terms are used to refer to more complex legal concepts:

**Information:** refers to personal information, i.e. information that concerns a natural person and makes it possible, directly or indirectly, to identify him or her.

- For example, a postal or e-mail address, a unique number, geolocation data, a photograph, a psychological characteristic, etc.

**Sensitive information:** personal information that, because of its medical, biometric or other intimate nature, or because of the context in which it is used or disclosed, gives rise to a reasonable expectation of privacy.

- For example, a fingerprint, a tax assessment number, a diagnosis, etc.

**Organization:** means any entity, public or private, 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 ministries, educational organizations, Crown corporations, small, medium and large companies of all types, including sole proprietorships, etc.

**Primary purposes:** refers to the purposes for which personal information is collected by an organization. They concern the provision of a service or product, or access to a job. They are announced at the time of collection.

- For example, to process a customer's payment, a company collects financial information; to process a claim for benefits, a public body collects information about a person's employment.

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

- For example, to carry out market research, a company may want to re-use information it already has; to facilitate administrative procedures with another organization, an organization may want to share information about a citizen's file.

# Introduction

## A. These guidelines aim to clarify the criteria for valid consent

### A.1. Purpose of the guidelines.

These guidelines deal with the **criteria for valid consent that** organizations must obtain from a person concerned by personal information. These criteria are as follows:

- a. Section [53.1](#) of the [Act respecting access to documents held by public bodies and the protection of personal information](#) (the **ATIA**);
- b. In section [14](#) of the [Act respecting the protection of personal information in the private sector](#) (the **LP**).

The guidelines in this document are designed to apply these two articles, unless other articles are explicitly mentioned. In such cases, they are cited at the bottom of the page.

### A.2. Intention and strength of the guidelines

The Commission d'accès à l'information (**CAI**) is responsible for developing guidelines to facilitate the application of the ATIA and the LP.<sup>1</sup> The purpose of this document is to clarify the obligations of organizations with regard to obtaining valid consent, taking into account the legislation as a whole and case law.

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

### A.3. Obligations and best practices

These guidelines also identify good practices that promote respect for people's right to privacy. The CAI distinguishes them from obligations throughout the text:

- a. When she refers to **obligations**, the CAI mainly uses **the verb "must" in the present tense**;
- b. When she urges the adoption of **good practices**, the CAI uses **the conditional tense or terms related to recommendation or possibility** ("should", "could").

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<sup>1</sup> ATIA, [article 123](#).

## A.4. Exclusions

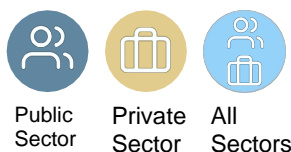
These guidelines do not apply to consent to the disclosure of information that is *not personal* - such as technical, financial or trade secret information.<sup>2</sup>

Nor are they intended to provide specific guidance on *when consent is or is not required*, except for the general information given in [section B](#). They focus on the criteria to be met when consent is indeed required by law.

## A.5. Examples

Examples are given in the [second half of the document](#) to illustrate the content of the guidelines. They are fictitious, but may be inspired by real-life practices. Since they are intended to highlight specific aspects of the text - for example, a single validity criterion - they present deliberately simplified situations. In reality, each context requires its own specific analysis. These examples are therefore tools. When a potentially non-compliant situation is described, the CAI suggests a course of action, but this should not be regarded as the only possible solution.

Although the examples are generally associated with one sector, public or private, they can inspire organizations in the other. The following icons and colors are used to classify them:



## A.6. Other laws

Organizations are responsible for knowing and complying with their consent obligations under other legislation, whether sector-specific, such as the [Act respecting health services and social services](#), or general, such as the [Civil Code of Québec](#). Furthermore, the fact that an organization obtains valid consent does not relieve it of its other legal obligations regarding the protection of personal information.

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<sup>2</sup> ATIA, [sections 23, 24, 25](#) and [49](#).



## B. Consent gives individuals 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 has control over the collection, use and disclosure of their information.

### B.2. Control procedures

The law stipulates that this control is exercised :

- a. Through rights (to access, rectification, etc.) or remedies (complaint to an organization or the CAI, etc.). To ensure that individuals can exercise these rights with full knowledge of the facts, the law requires organizations to be **transparent**;
- b. By **consent**. Linked to personal autonomy, consent implies that individuals give their agreement to certain actions involving their information. To be legally **valid**, consent **must** meet certain criteria (see [page 9](#)).

### B.3. Consent and collection

The ATIA and the LP, unlike other Canadian or international privacy laws, do not provide a framework for collecting information by consent, except in specific cases. Instead, to **collect** information, an organization **must** :

- a. Clearly identify the purposes for which the information is collected and respect the **necessity** criterion<sup>3</sup>;
  - i. In particular, the objectives pursued must be important, legitimate and real. Data collection must be proportional to these objectives, i.e. rationally linked to them, limited to the maximum, and clearly more useful to the organization than harmful to the individuals concerned;
- b. Respect its **obligation of transparency** by providing accurate and complete information to data subjects when data is collected from them<sup>4</sup>.

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<sup>3</sup> ATIA, [article 64](#); LP, [article 5](#).

<sup>4</sup> ATIA, [article 65](#) et seq.; LP, [article 8](#) et seq.

## B.4. Collection involving technological functions

When an organization collects information through the use of technology that has functions that identify, locate or profile the individual concerned, these functions **must** be deactivated by default<sup>5</sup> In addition, the law imposes an obligation transparency. The organization **must** therefore inform the persons concerned:

- a. That it uses such technology;
- b. Of the means offered to activate identification, localization or profiling functions. The person concerned must therefore make a positive action in order to do so.

See e x a m p l e s



## B.5. Special cases

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

- a. Collect information **from a minor under the age of 14**<sup>6</sup>;
- b. Collect information **from a third party** rather than from the person concerned, with the exception of the private sector.<sup>7</sup>

## B.6. Consent and primary purposes

An organization that duly respects its obligation of transparency when collecting information from data subjects may consider that those who provide their information with full knowledge of the facts consent to the use and communication necessary for the stated primary purposes.<sup>8</sup> This consent can be withdrawn at a later date (see [paragraph 2.3](#) and [paragraph 2.6](#)).

## B.7. Consent and secondary purposes

With a few exceptions, an organization **must** obtain valid consent:

- a. To **use** information for secondary purposes<sup>9</sup>;
- b. To **communicate** information to a third party.<sup>10</sup>

## B.8. Consent and necessity

Consent never overrides the **necessity** criterion (see [paragraph B.3](#)). Thus, at all stages of the information life cycle, i.e. collection, use, disclosure, retention and destruction, the information **must** first and foremost be necessary to achieve the intended purpose. This requirement is well established in case law.<sup>11</sup>

See e x a m p l e



<sup>5</sup> ATIA, [article 65.0.1](#); LP, [article 8.1](#).

<sup>6</sup> ATIA, [article 64.1](#); LP, [article 4.1](#).

<sup>7</sup> LP, [article 6](#).

<sup>8</sup> ATIA, [article 65.0.2](#); LP, [article 8.3](#).

<sup>9</sup> ATIA, [article 65.1](#); LP, [article 12](#).

<sup>10</sup> ATIA, [sections 53, 59 and 88](#); LP, [sections 13 and 40](#).

## B.9. Time of consent

An organization **must** obtain consent **before** carrying out the actions it is concerned with.

## B.10. Exceptions to consent

In certain cases, the ATIA and the LP provide for exceptions allowing an organization to act without having to obtain consent. Many other laws also provide for similar exceptions. Where an exception applies, since there is no consent, the validity criteria (see [page 9](#)) are irrelevant.

## B.11. Transparency regarding exceptions

An organization **should** demonstrate transparency by describing, in one of the documents it must make public concerning information management<sup>12</sup>the exceptions to consent to which it is most likely to have recourse. This practice enables individuals to be informed of these possibilities and to exercise control through their rights and recourses (see [paragraph B.1](#)).

## B.12. Context for exceptions

To benefit from an exception to consent, an organization **must** ensure that its conditions of application are met.

Exceptions are, however, discretionary. The organization **should** use them only if it is not possible or appropriate to use consent. In certain cases covered by the exceptions, it **may** therefore choose to rely on consent instead, particularly when obtaining it poses no practical difficulties (easy-to-reach people, non-urgent situation, etc.).

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

- a. Consent may sometimes be more advantageous for the organization, for example to facilitate its documentation of compliance with the law (see [section C](#));

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<sup>11</sup> For example, ATIA, [article 64](#), [article 65.1](#), [article 67](#); LP, [article 5](#), [article 12](#), [article 18](#).

<sup>12</sup> These may include, for example, governance policies or rules, or a privacy policy, depending on the circumstances.

- b. Consent can also be withdrawn at a later date by the person concerned (see [paragraph 2.6](#)), giving him or her additional control over his or her information;
- c. The organization may wish to increase its level of transparency with regard to the management of personal information.

### B.13. Respecting people's choices

Consent must allow genuine control by the people concerned. An organization that chooses to rely, for a specific purpose, on consent rather than on an applicable exception, **should** therefore respect the choice of the individuals concerned. It **should not**, for that same purpose, go back and choose to rely on the exception only because the individuals concerned refuse to consent or withdraw their consent.

### B.14. When in doubt

If an organization is unsure whether an exception applies in a given situation, it **must** instead obtain the valid consent of the person concerned.

## C. It is essential that organizations document their practices

### C.1. Importance of documentation

CAI wishes to emphasize the importance of organizations documenting their consent practices. Organizations **should pay** serious attention to this issue. Documentation helps to structure thinking about the protection of personal information. It enables organizations to better justify their actions in the event of a complaint, an allegation of action taken without consent, or an investigation. When the obtaining or validity of consent is inadequately documented, there is a risk that the CAI or any court will conclude that consent was not valid or was not obtained in a given situation. This could result in a breach of the law.

### C.2. Documentation of consent

Where consent is required, an organization **should** document that it has been obtained (or withdrawn; see [paragraph 2.6](#)). However, it **should not** collect more information than is necessary to ensure this documentation. It **should** develop and implement methods adapted to its context, its activities and the form of consent (see [paragraph 1.2](#) and [paragraph 1.3](#)).

See example



### C.3. Documenting the validity of consent

Consent that does not meet the validity criteria is ineffective.<sup>13</sup> In the same vein, an organization **should** document the elements that make it possible to establish the validity of the consent obtained. Here again, it is up to the organization to determine the best method for doing so. For example, it **could** keep records of the circumstances in which consent was sought, or the way in which it was obtained (wording of information provided to individuals, script used by the organization's agents on the telephone, etc.). This documentation makes it easier to attest, in the future, that a practice was compliant at the time consent was obtained.

See examples 

### C.4. Identity checks

Consent is the expression of a personal will. An organization **must** ensure that it obtains consent from the right person, i.e. the person concerned or his or her legal representative, where applicable (see [paragraph 3.2](#)). Where there is a legal representative, the organization **must** also verify the capacity of the person giving consent (holder of parental authority, representative or proxy, etc.). These verifications **could** include information, but the organization **shall not** retain or collect more information than is necessary.

The organization **should** aim for a level of certainty that is reasonable in the circumstances, taking into account, among other things, the purposes for which the information is to be used, the sensitivity of the information and the nature of its activities.

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<sup>13</sup> ATIA, [article 53.1](#); LP, [article 14](#).

# Criteria for valid consent

Valid consent is defined in sections 53.1 of the ATIA and 14 of the LP, which contain eight criteria:

"Consent under (the ATIA or the LP) must be clear, free and informed and be given for specific purposes. It must be requested for each such purpose, in clear and simple language.

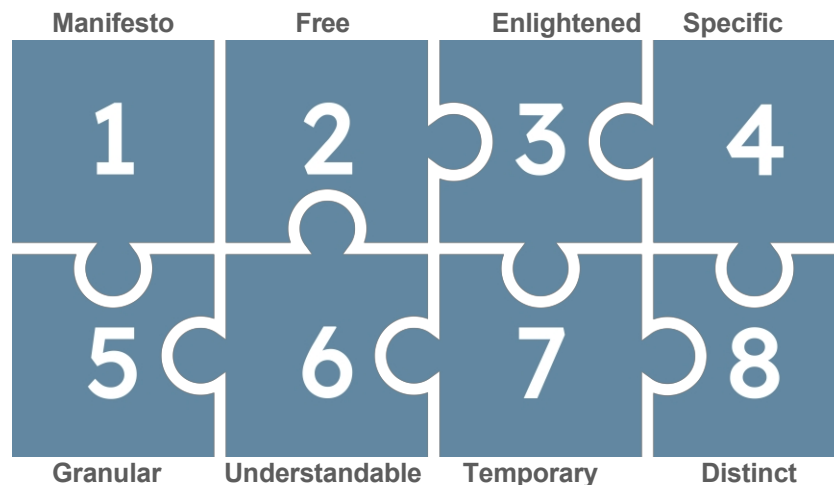
If the request for consent is made in writing, it must be presented separately from any other information provided to the person concerned. If the person concerned so requests, assistance is provided to help him understand the scope of the consent requested.

(...)

Consent is valid only for the time necessary to achieve the purposes for which it was requested.

Consent not given in accordance with (the law) is without effect.

The criteria are interrelated. They are all important: if one of them is not met, the consent is invalid and without effect.



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



# 1

## Consent must be manifest

### 1.1. Manifest

Consent **must** first be **manifest**, i.e. obvious and given in a way that demonstrates the real will of the person concerned. This will may be **express**, but it may also be **implicit** in certain circumstances.

### 1.2. Express consent

Consent is **express** when the person makes an active gesture (or statement) that clearly indicates agreement. This gesture or statement serves no other purpose than to consent, and is said to be **positive**: it indicates acceptance, not refusal. There remains no doubt as to the person's true will. The English expression *opt in* also refers to this form of consent.

### 1.3. Implied consent

Consent is **implicit** if it is not expressly formulated. The organization deduces it from another action taken by the person concerned, or from his/her silence/inactivity. The person concerned **must** be informed that this action, silence or inactivity will be interpreted as consent (see [section 3](#)). He or she **should** have a valid opportunity to refuse consent. This form of consent is also referred to as *opt-out*.

### 1.4. Methods of obtaining manifest consent

An organization is free to develop consent mechanisms that suit its activities, as long as they comply with the law. These mechanisms **should** be adapted to the individuals concerned, the context and the type of interface used. Here are some examples, depending on the form of consent:

- a. **Express consent :**
  - i. Signature of a document;
  - ii. Activate a box;
  - iii. Answering a question affirmatively;
  - iv. Verbal approval;
- b. **Implied consent :**
  - i. Box already checked but can be unchecked;
  - ii. Deduced from silence or inactivity;
  - iii. Deduced from another action taken by the person.

See examples



## 1.5. Selecting express or implied consent

When an organization determines that it needs consent, the law requires that it be express, in some cases. In other cases, the organization chooses whether express or implied consent is best suited to the context of its activities. The elements presented in the following paragraphs are intended to support the analysis to be carried out.

## 1.6. General tags

Express consent is **required** when the organization wishes to use or disclose **sensitive information**<sup>14</sup>. It is not required, however, if such use or disclosure is necessary for the primary purpose and is disclosed at the time of collection<sup>15</sup> (see [paragraph B.6](#)). It should be noted that other Quebec laws require express consent in certain situations.

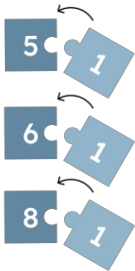
Since it does not require an active, positive gesture, implied consent **should** be used only when the following additional criteria are met:

- a. Use or communication does not run counter to people's **reasonable expectations in the given context**;
- b. **No risk of serious harm** arises from the intended use or communication.

Consent for use or communication necessary for primary purposes (see [paragraph B.6](#)) covers many situations in which implied consent might be considered relevant. Cases where implied consent to a secondary purpose is actually appropriate are likely to be rarer.

See examples 

## 1.7. Compliance with all criteria and documentation



Whether consent is express or implicit, it **must** be manifest, i.e. evident from the individual's behavior. The organization **must** also ensure compliance with the other validity criteria. Since express consent is formally *requested*, it facilitates compliance with some of them, such as granularity (see [section 5](#)), comprehensibility (see [section 6](#)) and distinctiveness (see [section 8](#)). It is also easier to document (see [section C](#)), and leaves no doubt as to the actual wishes of the person concerned. For these reasons, organizations **should** give preference to express consent.

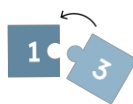
## 1.8. Consent fatigue

Even if it opts for express consent, an organization **should** take steps to mitigate consent fatigue. Indeed, every day, we are asked to give our consent in a multitude of contexts. In the digital world, this is often done by checking a box or clicking a button. Although the repetitive

<sup>14</sup> ATIA, [article 59](#) and [article 65.1](#); LP, [article 12](#) and [article 13](#).

<sup>15</sup> ATIA, [article 65.0.2](#); LP, [article 8.3](#).





nature of these gestures can make them meaningless, it is important that the person concerned is aware that he or she is giving consent, not least so that he or she understands the information made available to him or her (informed consent criterion; see [section 3](#)).

## 1.9. When in doubt

If there is any doubt about the individual's true wishes regarding the use or disclosure of his or her information, the organization **should** obtain express consent.

# 2

## Consent must be free

### 2.1. The notion of "free" consent

Consent **must** be **free**, i.e. imply genuine choice and control, and be given without coercion or pressure. The person concerned **must** therefore be able to exercise his or her will without being unduly influenced or suffering disproportionate harm.

### 2.2. Equitable mechanisms

It **should be** as easy to give consent as not. These options **should** be presented fairly. Consent mechanisms that do not guarantee the fairness of options, or that influence choice, could lead to invalid consent, since it is not truly free. For example:

- a. Emphasizing acceptance rather than refusal can render consent ineffective, regardless of exactly how it is done: visual emphasis (colors, font size, etc.), effort required of the user in terms of number of clicks or web browsing, deliberately ambiguous wording, misleading texts, etc;
- b. Repeatedly requesting consent within a short period of time, when it has already been refused, may contravene its free nature. Consent **should** generally only be sought once for the same purpose, unless the context justifies it or an appropriate interval of time has elapsed.

See examples 2-a 2-b

### 2.3. Consent as a condition

In principle, consent cannot be free if it is a mandatory condition of access to a service, product or job. Organizations **must** therefore allow individuals to refuse **secondary purposes** without influencing the initial agreement.

Sometimes, however, the use or communication of information is essential to the provision of a service or good, or to access to a job. In such cases, it is related to the

**primary purpose** of the organization. If the organization complies with its transparency obligation, individuals consent to the use or disclosure necessary for this primary purpose by providing their information<sup>16</sup> (see [paragraph B.6](#)). If they do not provide this information, the organization cannot provide them with the service or good, or allow them access to the job, and is therefore within its rights to refuse it.<sup>17</sup> An organization **must** ensure that the use or disclosure is necessary in the circumstances.

See examples  2-c 2-d

## 2.4. Change of purpose

When an organization pursues a new purpose subject to consent (see [paragraph 4.5](#)), consent may not be free if the organization indicates that it will cease to provide a service, good or job to those who refuse to give it. In such a case, the organization **should be** able to demonstrate once again that this new purpose is necessary for the continuation of the activity (see [paragraph B.3](#) and [paragraph 2.3](#)).

## 2.5. Situations of imbalance

Situations where there is an imbalance of power between an organization and a data subject can threaten the free nature of consent. This is particularly the case in employer/employee relationships. The CAI recognizes that, in such circumstances, the law does not offer a ready-made solution. An organization **should** adopt measures appropriate to its context to mitigate this problem if it must rely on consent. It may, for example, offer alternative ways of achieving the purpose so that an individual still has control over his or her information. In all cases, particular attention **should** be paid to transparency, to ensure that the data subject is as well informed as possible, and that his or her other rights (complaint, access, rectification, etc.) are reserved (see [paragraph B.2](#)).

See examples  2-e 2-f

## 2.6. Withdrawal of consent

Consent may be withdrawn at any time by the person concerned<sup>18</sup>. An organization **should** provide a simple and accessible mechanism for withdrawing consent, and **should** notify the persons concerned. The fact that a person has to make disproportionate efforts to exercise this right may undermine the free nature of consent.

See examples  2-g 2-h

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<sup>16</sup> ATIA, [article 65.0.2](#); LP, [article 8.3](#).

<sup>17</sup> LP, [article 9](#).

<sup>18</sup> ATIA, [article 65](#); LP, [article 8](#).



## Consent must be informed

### 3.1. The notion of "informed" consent

Consent **must** be **informed**, i.e. precise and based on appropriate knowledge. An organization **must ensure** that the person concerned knows and understands what he or she is consenting to and what this entails. If the organization does not provide the necessary information to do so, the control exercised by the individual is illusory and the consent is invalid.

### 3.2. Personal "ability"

To be informed, consent **must** first be given by a person who has the capacity to enter into legally binding relationships.<sup>19</sup> For example, consent given by a person who does not have this capacity or consent given by a minor under the age of 14<sup>20</sup> is not valid. In these circumstances, however, consent can be given by a representative, such as a parent or legal guardian.

### 3.3. Parallels between the obligation of transparency at the time of collection and the notion of "informed" consent

An analogy should be drawn between the information that an organization **must** provide to data subjects at the time of collection<sup>21</sup> (see [paragraph B.3](#)) and the information it **should** provide to ensure informed consent. Indeed, the law stipulates that individuals who provide their information after having received the information required by law at the time of collection consent to the use and communication necessary for the primary purposes stated<sup>22</sup> (see [paragraph B.6](#)). The legislator therefore considers that this information enables the person concerned to make an informed decision regarding his or her personal information.

Therefore, to ensure informed consent, an organization **should** provide the information presented below, which is inspired by sections [65](#) ATIA and [8](#) LP, with the necessary adjustments, depending on the context. **Paragraphs 3.4 and 3.5 are therefore not intended as guidelines for the application of these articles in a collection context.**

### 3.4. Information to be provided

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

- a. **Who?** The name of the organization on whose behalf consent is requested;
- b. **Why?** Purpose for which consent is sought;

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<sup>19</sup> [Civil Code of Québec, article 1398](#).

<sup>20</sup> ATIA, [article 53.1](#) and [article 64.1](#); LP, [article 4.1](#) and [article 14](#).

<sup>21</sup> ATIA, [article 65](#) and [article 65.0.1](#); LP, [article 8](#) and [article 8.1](#).

<sup>22</sup> ATIA, [article 65.0.2](#); LP, [article 8.3](#).

- c. **What?** Information concerned, or at least categories of information, as a reminder if a certain amount of time has elapsed since the information was collected;
- d. **From whom?** If applicable, name of third parties or category of third parties, outside the organization, from whom or on whose behalf the organization will collect the information;
- e. **How?** Means of using or communicating the information (postal communication; use of a fully automated decision, etc.);
- f. **To whom?** If applicable, name of third parties or category of third parties outside the organization to whom the organization will communicate the information;
- g. **Outside Quebec?** If applicable, information may be communicated outside Quebec;
- h. **Which rights?** Right to withdraw consent, right of access and right of rectification, with details on how to exercise these rights;
- i. **Information accessible to whom?** Categories of people within the organization who will have access to the information in order to achieve the intended purpose;
- j. **How long?** Duration of validity of consent (see [section 7](#));
- k. **Who can I contact if I need help?** Contact details for the Privacy Officer, from whom individuals can obtain further information or exercise their rights.

See examples   3-a 3-b

### 3.5. Information accessibility - levels

There is a lot of information to be provided to individuals when seeking consent. An organization **could** divide it up into several levels to increase readability. To establish the number of levels and their content, it **should** then take into account various elements: the context of its activities, the expectations of the people concerned, the sensitivity of the information in question, changes that have occurred since the information was collected that may affect the way it is handled, the fact that the information should be accessible on request, and so on.

For example, it is often possible to prioritize information into two levels:

- a. The **first level** (e.g. the consent request itself) could include :
  - i. **Purpose** (why);
  - ii. **Information or categories of information concerned** (what);
  - iii. **Third parties**, if any (to whom/by whom);
- b. In a **second level**, other information can be found. This second level could consist, among other things, of :
  - i. A privacy policy, such as that required by law when a technological means is used to collect information<sup>23</sup> ;
  - ii. An appendix to a form;

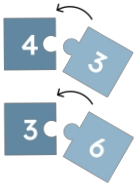
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<sup>23</sup> ATIA, [article 63.4](#); LP, [article 8.2](#).

- iii. A question mark icon or "Learn more" button next to the consent request;
- iv. When obtaining consent verbally, a statement indicating that further information is available on request.

See examples  3-c 3-d

### 3.6. Precision and clarity of terms used

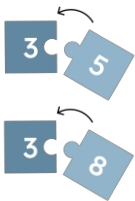


The elements presented above **should** enable specific consent (see [section 4](#)) through the use of simple, clear terms (see [section 6](#)). An organization **must** therefore avoid vague, imprecise or overly complex terms, as well as long texts or texts rich in legal jargon. These factors prevent people from fully understanding what they are agreeing to.

### 3.7. Separate information for each purpose

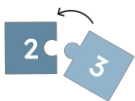
When a request for consent to secondary use or disclosure is made at the time of collection, an organization **must** ensure that it provides :

- a. The information required to comply with its transparency obligations relating to collection, including the primary purposes for which it collects the information<sup>24</sup>;
- b. Information relating to other purposes for which consent is requested. However, this **must be** done **separately** (see [section 5](#), and [section 8](#) for written requests). There is thus a link between the informed nature of consent and the amount of information given simultaneously to the data subject: presenting information distinctly, particularly if it concerns consent, reduces the risk of confusion.



See example  3-e

### 3.8. Subsequent availability of information



Since free consent can be withdrawn, the organization **should** again provide the relevant information to the person concerned, on request. In this way, the individual can reassess his or her decision after consenting, if necessary (see [paragraph 2.6](#)). An organization **could** deploy means to make information available by default for future reference, for example on a website.

### 3.9. Duty of care

An organization **must** provide assistance to individuals seeking help in understanding the scope of the consent requested. It is responsible for providing solutions for this purpose, depending on the context of its activities. For example, it **could** provide a phone or live online chat to reach a

<sup>24</sup> ATIA, [article 65](#) and [article 65.0.1](#); LP, [article 8](#) and [article 8.1](#).

manager, or set up a dedicated e-mail address to receive questions.

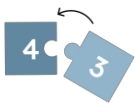
See example 

## 4 Consent must be specific

### 4.1. The notion of "specific" consent

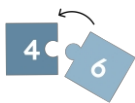
Consent must be **given for a specific purpose**, i.e. a precise and circumscribed object.

### 4.2. Link to the notion of "informed" consent



This criterion is closely linked to that of informed consent: a person can only consent if he or she is able to understand exactly what is being asked of him or her.

### 4.3. Specificity of terms



An organization **must** take care to use terms that adequately specify the purposes for which it is seeking consent. Vague, broad or imprecise terms threaten the specific nature of consent, and therefore its validity (see [section 6](#)).

See examples  

### 4.4. Restrictions on use

In order to respect the precise wishes of the persons concerned, an organization **must** rely on consent only for what it authorizes. Expressed consent is restrictive: it applies only to the purposes or third parties specified.

See example 

### 4.5. New purpose, new consent

When an organization wishes to use or disclose information for a new purpose, it **must** obtain new consent, unless a legal exception applies (see [paragraph B.10](#) et seq.).

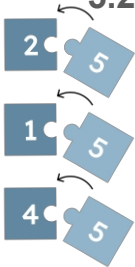


## Consent must be granular: it is requested for each of the purposes in question

### 5.1. Granularity

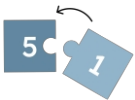
Consent **must** be **granular**, i.e. **requested for each of the purposes for which it is sought**. Granularity refers to the image of a material whose parts can be distinguished.

### 5.2. Link with free, informed and specific character



Granularity ensures that consent is truly free. This is not the case if the individual has to authorize several purposes or third parties to whom the organization communicates his or her information at the same time, as the only choice is then to refuse or accept en bloc. Similarly, granularity ensures that the individual clearly expresses his or her wishes for each specific purpose.

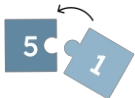
### 5.3. Shades of consent



To enable data subjects to make a granular choice as to what they accept or reject, an organization **must** inform them of each purpose and, in the case of disclosure, list the third parties or categories of third parties who will receive the information. It **must** then allow individuals to express their agreement or disagreement separately, for each of the purposes and each of the third parties or categories of third parties concerned. It is not a question of duplicating all the elements relating to consent (e.g., multiplying the number of forms, giving the same information several times, etc.): the organization **must** only adapt its method of obtaining consent (see [paragraph 1.4](#)) for the purposes of granularity.

See examples  **5-a**  **5-b**

### 5.4. Granularity and implicit consent



Since implied consent does not involve an active, positive action (see [paragraph 1.3](#)), it is more difficult for it to be granular (see [paragraph 1.7](#)). To avoid this problem, an organization that relies on implied consent **should** generally ensure that it concerns only one purpose.

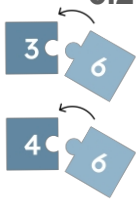


## The request for consent must be understandable: it must be presented in clear and simple terms.

### 6.1. Comprehensibility

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

### 6.2. Link to informed and specific character



The purpose of this criterion is to ensure that consent is informed, but also to prevent the organization from subsequently interpreting consent too broadly (specificity of consent). Various elements can simplify and clarify statements for the persons concerned, including those presented in the following paragraphs.<sup>25</sup>

### 6.3. Concise

Statements should be concise, i.e. expressed in as few words as possible, while remaining clear. An organization **should** avoid superfluous words, complex structures and too many periphrases. Overly long sentences or texts are detrimental to an individual's understanding.

See example 

### 6.4. Simple vocabulary

An organization **should** use simple terms, i.e. those that are accessible to the people concerned. It **should** use everyday vocabulary, without legal or organizational jargon.

See example 

### 6.5. Clear intentions

An organization **should** use the most direct terms possible in its request for consent, both in the way it is presented and in the formulation of the options available to the individual. Precise wording avoids any confusion as to what the person is being asked to do, and preserves its legal meaning. Similarly, the organization **should** avoid terms expressing uncertainty or hypothesis (e.g. conditional verbs), unless you can demonstrate why it is unavoidable to use them.

See example 

<sup>25</sup> The plain-language Web writing principles [of the Québec.ca government design system](#) can be a useful resource.



## 6.6. Adapting to the audience

An organization **should** adapt its information to its target audience. To do so, it **should take** into account the perspective and profile of the people concerned. They may not always be familiar with their privacy rights, or with the organization's activities. The organization **should** therefore adapt the terms used so that the information is reasonably comprehensible to a majority of data subjects.

See examples



## Consent must be temporary: it is valid only for as long as necessary.

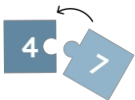
### 7.1. Temporary nature

Consent **must** be **temporary**, i.e. **valid for a limited period of time**. It is valid only for as long as is necessary for the purposes for which it was requested. It is no longer valid once these purposes have been fulfilled.

### 7.2. Delimitation of duration

The duration limit is associated with the intended purpose. This can be considered to have been achieved according to one of two factors:

- a. **A deadline:** after a period of 30 days, one year, six years, etc.
- b. **An event:** when an event occurs (as soon as a payment is completed, as soon as a person leaves their job, as soon as a contract ends, etc.).



An organization **must** define in advance the period of time required to fulfill the purpose. It **should** inform data subjects of this (see [section 3.4](#)). The time limit helps to make consent specific (see [section 4](#)).

See example



### 7.3. Distinction between period of consent validity and data retention period

The period of consent validity is a different concept from the period of data retention. Thus, the end of the validity of a consent does not always coincide with the destruction of the information.

The length of time an organization may retain information thus depends not only on the purposes for which it is to be used, but also on the laws applicable in its context.<sup>26</sup> For example, many public bodies must comply with the [Archives Act](#)<sup>27</sup> for example, financial organizations have retention obligations under sector-specific legislation, and professionals must keep their records in accordance with regulations specific to their field.

## 7.4. Transparency regarding long-term consent

When an organization asks for consent for a very long time, it **should pay** particular attention to transparency on an ongoing basis. It **could** remind data subjects, at appropriate intervals, that it uses or communicates their information on the basis of consent. It **could** refer to up-to-date information on this situation (see [paragraph 3.8](#)) and remind them that they can withdraw their consent at any time. The organization **could** also disseminate this information by an easily accessible means (e.g. a website).



## 8 The request for consent must be distinct: it is presented separately if it is made in writing.

### 8.1. Distinct character

If the request for consent is made in writing, it **must** be **presented separately from any other information**. It **must** therefore be separate from terms of use, privacy policies, requests to confirm the validity of information provided, commitments, signatures, etc. It **could be** featured in its own section or interface (form section, overlay window in an application, etc.), so it's easily accessible to the person concerned.

See examples 

### 8.2. Link to other validity criteria

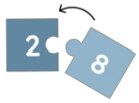
The distinctiveness of the consent request is interrelated with other criteria for valid consent, including the following:

- a. **Manifest and free:** Consent is not manifest if it is expressed by a gesture that may also attest to something else, such as the receipt of information or the validity of the information provided, since the intentions behind the gesture are then not clear

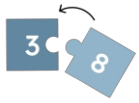


<sup>26</sup> ATIA, [article 73](#); LP, [article 23](#).

<sup>27</sup> The CAI is not responsible for monitoring the application of this law.



(see [paragraph 2.3](#)). Nor is it free, as it is difficult to express a refusal in these circumstances;



- b. **Informed nature:** separate requests for consent help to limit the amount of information provided at the same time, making it easier for the person concerned to understand.

*See examples*



# Examples



As mentioned in [paragraph A.5](#), the following examples are intended to illustrate the guidelines. They are fictitious, but may be inspired by real-life practices. Since they aim to highlight specific aspects of the text - for example, a single validity criterion - they present deliberately simplified situations. In reality, each context requires its own analysis.

As such, these examples are tools. When a potentially non-compliant situation is described, the CAI suggests a course of action, but this should not be considered the only possible solution.

Even if the examples are generally associated with one sector, public or private, they can inspire organizations in the other.

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

## Examples from the Introduction

	Example	Paragraphs concerned
 <p>Private Sector</p>	<p><b>Example B-a</b></p> <p>A dating app allows users to define a zone of varying size around their location to filter potential partners according to their proximity. During the sign-up phase, the application presents various information required by law when collecting PI.</p> <p>A notice informs users that it includes a localization feature. This is deactivated by default. <b>To activate it, users must enable geolocation on their mobile device and allow the application to access it. The application informs them of the means available to do so.</b></p>	<p><a href="#">Paragraph B.4</a></p>
 <p>Private Sector</p>	<p><b>Example B-b</b></p> <p>A magazine's website offers personalized article recommendations based on readers' interests, inferred by an artificial intelligence algorithm. The information used for inference (e.g. pages consulted, clicks, browser language, time spent on each page, etc.) are collected using <i>cookies</i> placed on the reader's device. Since this technology makes it possible to carry out profiling, <b>the magazine displays an overlay window on the first visit to the site, providing readers with the information required by law. It then tells them how to <u>activate</u> the relevant cookies.</b></p>	<p><a href="#">Paragraph B.4</a></p>

**Example** **Paragraphs concerned**

**Example B-c**

At its general meeting, a condominium association passed a unanimous resolution to install surveillance cameras as a preventive measure against vandalism. The cameras are positioned at an angle so as to film the front door of each unit.

Despite the agreement of the co-owners, which indicates their consent, capturing images throughout the building may not be proportional to the security objective pursued. The invasion of privacy of the co-owners and their guests is significant: the angle of the cameras makes it possible to film everyone's comings and goings. In these circumstances, the installation of surveillance by the condominium association may not meet the necessity criterion.

**Consent would not be sufficient to ensure compliance with the law. To ensure compliance, the condominium corporation could re-evaluate the necessity of the video surveillance, for example, through a privacy impact assessment. It could consider modifying the camera angles to capture only the main entrance and exit doors of the building, so as to limit the invasion of privacy.**

Paragraph [B.8](#)



Private Sector

**Example C-a**

An organization has a policy and procedures relating to customer consent to the disclosure of their information. **With a view to documenting the process of obtaining consent while collecting only the information required for this purpose, the organization stipulates that any verbal consent obtained over the telephone must be noted in the file of the person concerned. The agent collecting the consent must also note the person's name, the date and the time. In recent years, the organisation has also updated its telephone call scripts on three occasions. Each time, the organization has kept a copy of the previous versions. Should the need arise, this would make it easier to demonstrate that informed consent was obtained during the period when a previous version of the scripts was in use.**

Paragraph [C.2](#)

Paragraph [C.3](#)



All Sectors

**Example C-b**

A Crown corporation offering digital services frequently updates its online consent forms. Each time, it registers the version in its archives. Each version of the form is saved in the corporation's archives, with an indication of the period during which the form was in use.

**This practice enables the Crown corporation to keep a record of the elements for assessing the validity of a consent obtained at an earlier period. Archived forms could thus be used in the context of an audit or an inspection, for example.**

Paragraph [C.3](#)



Public Sector

## Examples related to consent being "manifest"

Example

Paragraphs concerned

### Example 1-a



Public Sector

An employee of a public organization provides services to people with motor difficulties, the majority of whom cannot write or use touch screens. To validate financial aid, this employee must communicate information contained in their file to a government department. His organization's rules of governance preclude the use of exceptions to consent when it is, in practice, easy to obtain (e.g. when a small number of people are involved). The employee thus relies on the express consent of the persons concerned for the communication of information.

**In order to take into account the particularities of the clientele to whom the services are provided, the employee asks for consent verbally, at the time of his or her next appointment. The employee records the date, time and details of the consent in the individual's file.**

1.4

### Example 1-b



Private Sector

A manufacturer markets a connected educational toy aimed at children aged 5 to 8. The toy can record the child's first name and measure week by week the progress of his or her answers to questions related to letters and numbers (correct or incorrect answers, response time, etc.). These results are then made available to parents via a secure web portal. The manufacturer must obtain parental consent to collect this information from children. During setup, the toy provides auditory instructions to parents. **To consent to this collection from their child, they are asked to log on to the web portal to tick an acceptance or refusal box. This mechanism enables the manufacturer to obtain the express consent of parents.**

1.4

### Example 1-c



Public Sector

In order to respond more effectively to requests from citizens, an organization wants to design an artificial intelligence system (AIS) to prioritize files. It plans to develop the AIS using data on the use of its services over the past three years. Its Access to Information and Privacy Committee, having completed a Privacy Impact Assessment (PIA), believes that express consent is required to use the information for this new purpose.

Despite this, the organization decided to send an e-mail to the citizens concerned informing them of this new use, mentioning that they could contact the organization's Privacy Officer to withdraw their consent to this use. **This deduction of consent, based on silence or inactivity on the part of individuals who do not contact the organization to withdraw their consent, does not offer citizens the possibility of making a positive gesture of acceptance. It therefore does not lead to the obtention of express**

1.4

Example	Paragraphs concerned
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consent, but rather implicit consent. To comply with its committee's guidelines, the organization could, for example, have asked citizens to give their consent via a personalized Web link linked to their file.

**Example 1-d**



Public Sector

An organization that pays benefits to people with disabilities holds sensitive information on their health and financial situation. As part of the organization of a provincial conference on the inclusion of people with disabilities, the organization wanted to produce case studies regarding its program's participants. However, at the time of collecting the information to pay the allowances, the organization made no mention of this secondary use. **In order to be able to use the information of the recipients of the allowances, the organization must therefore obtain their express consent, since the information is sensitive. For this consent to be expressed unequivocally, the organization could develop a freestanding form and forward it to beneficiaries for their signature.**

1.6

**Example 1-e**



Private Sector

A massage therapy clinic is organizing a series of health and wellness conferences in collaboration with other health care providers. The owner wants to send personalized invitations to her customers. She plans to use information about their health and medical history collected when their file was opened, to target certain customers and offer them the opportunity to participate in conferences. **She cannot use sensitive information for this secondary purpose without express consent. If it is too difficult to obtain express consent from each customer, the owner may instead choose to advertise the conferences in the clinic newsletter already sent to clients who have agreed to receive news about events.**

1.6

**Example 1-f**



Private Sector

After a series of break-in attempts, an explosives manufacturing company wants to tighten access control to its reagent storage site, limiting it to authorized personnel only. The company is considering the purchase of a biometric hand recognition system. Following a privacy impact assessment that takes into account the context of its activities, the company concludes that the use of this technology respects the criterion of necessity in this situation. Since the system is based on biometric characteristics, **the company recognizes that it needs to obtain express consent, and therefore takes on the task of developing**

1.6

Example	Paragraphs concerned
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a consent form<sup>28</sup>. Employees who wish to do so can sign it, and those who refuse can opt to use an electronic access card system.

**Example 1-g**

An elementary school offers an extracurricular photography workshop for students in grades 5 and 6. Parents validate their children's enrolment by paying the relevant fees. In November, registered students take part in a portrait workshop and take photos of each other. Proud of the results, the teacher in charge of the activity selects five children's photos and forwards them to the school management for publication on the school's "parent portal", highlighting the activities offered by the school and the children's progress. Both felt that the parents had agreed to this publication, since they had been informed of the portrait workshop and since the "parent portal" was secure and accessible only to parents.



Public Sector

1.6

**This implied consent may not be valid in these circumstances. Parents probably do not expect that pictures of their children be made available to hundreds of parents without their express consent. In the context of such widespread distribution, the photos of children could be considered sensitive, and the risks of serious harm arising from their dissemination would have to be assessed. For these reasons, the school would have been better off obtaining express consent. It could have sent an electronic consent form to the parents via the portal.**

**Example 1-h**

An appliance leasing company receives a request to lease a refrigerator for 48 months. The automatic acknowledgement sent to the applicant indicates that the company will grant financing at a favorable rate for this period after a credit investigation by a personal information agent, whose name is mentioned in the e-mail. In a separate section, the e-mail states that, in the absence of any notice to the contrary from the applicant, the company will communicate the necessary identity information to the agent three days later. Since the applicant has not responded, the company proceeds with the credit investigation for financing, affecting the applicant's credit rating. The applicant then complained to the company, indicating that he intended to pay for the lease without obtaining financing. **In this situation, the company could not rely on implicit consent for the credit inquiry: it ran counter to the applicant's reasonable expectations, given that he had not chosen to apply for financing, and**



Private Sector

1.6

<sup>28</sup> Section 44 of the *Act respecting the legal framework for information technology* requires express consent to verify or confirm a person's identity by means of a process that captures biometric characteristics or measurements.



Example	Paragraphs concerned
<p>caused him significant harm by lowering his credit rating. The company should have opted for a method of obtaining express consent to request a credit check.</p>	

## Examples of consent being "free"

Example	Paragraphs concerned
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### Example 2-a

A municipality offers an application where users can report various problems related to the maintenance of public spaces (snow removal, waste collection, etc.). To create an account, users must provide an e-mail address, which serves as an identifier, and a postal code to initialize the zone that is displayed by default in the maps available in the application. The users can then access all services via the application itself, and see the progress of their reports.

The application also allows them to use their e-mail address to receive updates on the status of roadworks in their area. The municipality provides an overlay window to collect this consent. **Users are presented with two buttons, "I accept" and "I refuse". This makes it just as easy for them to give their consent as it is for them not to. What's more, these buttons are exactly the same height, color and font size. By ensuring equity in the visual presentation of choices, the municipality further promotes the free nature of the consent obtained.**



Public Sector

### Example 2-b

A clothing boutique's website allows customers to create an account to facilitate their online purchases. Each time they log on, an alert is displayed, inviting them to receive the boutique's weekly newsletter, which includes discounts that may be of interest to them. It's just as easy to accept this secondary use of your e-mail address as it is to refuse it. However, if a customer refuses, the window appears each time he or she logs on to his or her account. **These repeated, closely spaced requests for consent, regardless of the customer's previously expressed wishes, could compromise the customer's freedom of choice. To avoid this, the store could ensure that a reasonable time interval (e.g. a few months) separates these requests.**



Private Sector

**Example** **Paragraphs concerned**

**Example 2-c**

In the application form that prospective students fill out, a public university explains that the information collected will be used to evaluate the application and communicate student status to the appropriate ministry, in the case of foreign students (primary purposes).

In a separate section entitled "Foundation", however, the university requests consent for a secondary purpose:

"I agree that my name, telephone number, e-mail address, date of admission and field of study may be shared with the University Foundation for the purpose of philanthropic solicitation. This consent is valid for a period of up to 5 years after the completion of my studies.

Yes  No "

**The university presents this secondary purpose, which is not essential to admission, in an appropriate manner. It leaves the applicant free to refuse the communication, without any consequences for the rest of the application. In so doing, it ensures that consent is freely given.**

**2.3**



Public Sector

**Example 2-d**

When selling a new car, a dealer uses a form to obtain the information needed to grant the customer financing. In the consent section, he adds the following statement:

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

When questioned by a puzzled customer, the company's owner points out that this modality is mandatory in order to receive financing. **This does not allow him to refuse the secondary purpose of sending promotional offers. As a result, the dealer does not obtain valid consent, since the customer is not free to do so. He should revise this practice to offer the customer the real possibility of refusing to receive promotional offers.**

**2.3**



Private Sector

**Example 2-e**

An inspection team from a supervisory body is working at a food company. On this occasion, the team's superior takes a photo of his employees at work so that the image can be included in the inspection report. A newspaper is interested in the inspection and asks if it can use the photo to accompany its article. The team manager considers sending an e-mail to the employees concerned, asking them if they agree to the photo of them contained in the inspection report being forwarded to the newspaper, and to its use in an article that will be published in the next day's edition. **Given the power relationship between the manager and his employees, the manager must ensure that the way the request is**

**2.5**



Public Sector

Example	Paragraphs concerned
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worded does not allow for any negative consequences in the event of a refusal. If employees feel obliged to accept, consent cannot be free. The manager should therefore seek to be as neutral as possible in his request. He would also do well to invite each employee to reply separately, to avoid any pressure from the group.

**Example 2-f**



Private Sector

A private laboratory decides to install a biometric access control system to restrict access to a room housing a machine that uses a highly radioactive material. Nuclear safety agency standards require particularly high levels of security to limit the risk of theft or sabotage of this type of material. In the consent form provided to employees, the company explains the purpose of the system and indicates that employees who do not wish their biometric information to be collected<sup>29</sup> will be able to authenticate themselves in another way. They will need to present an access card, then validate their identity with a security guard. Both biometric and traditional access cards remain under the control of the individuals concerned. **In these circumstances, the company makes reasonable efforts to preserve the freedom of consent, despite the employment context: employees can refuse collection and opt for a different authentication solution.**



**Example 2-g**



Public Sector

A team from a university research laboratory is conducting a study on voice perception. To build up their material, they recruit participants who will be recorded reciting a text. They sign a consent form including all the required information and allowing the researchers to re-use the voice in studies on other specific subjects, specified in the form, for a period of five years. **Participants who, at some point, no longer wish their voice to be used by the laboratory can withdraw their consent by sending a simple e-mail to the laboratory's common address. This withdrawal mechanism is simple and accessible. It is not an obstacle to obtaining free consent.**



Private Sector

**Example 2-h**

A music distribution company offers an application that allows users to access the albums they have purchased. A superimposed window appears on initial connection, allowing users to activate personalized recommendations for discovering



<sup>29</sup> Section 44 of the *Act respecting the legal framework for information technology* requires express consent to verify or confirm a person's identity by means of a process that captures biometric characteristics or measurements.

Example	Paragraphs concerned
<p>new music. An algorithm draws up a profile of the user based on, among other things, the songs he or she listens to, the length of time he or she listens, and the time of day he or she listens to the music. A user decides to withdraw consent to the use of this information for personalized recommendation purposes. The user has to make eight clicks in the application's various settings screens before finding the option to deactivate the function. While <b>it only takes one click to activate personalized recommendations, it takes many more to withdraw consent. In context, these efforts are disproportionate and undermine the free nature of consent on which the company relies. The number of clicks to consent or to refuse should be equivalent.</b></p>	

## Examples of consent being "informed"

Example	Paragraphs concerned
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### Example 3-a

A departmental employee has a person sign a generic consent form before completing all the fields. The text presented to her reads as follows, with no information on the blank lines:

"I authorize the Ministry to release the following information:  
 \_\_\_\_\_ to the following persons :  
 \_\_\_\_\_ and for the following purposes : \_\_\_\_\_  
 \_\_\_\_\_."



Public Sector

**This is not the way to obtain informed consent. The person cannot understand the scope of what they are consenting to if they have no information about what is being consented to. When consent is sought, it must be given with full knowledge of the facts. The department could instruct employees to always fill in the blank lines before having the forms signed by the people concerned.**

### Example 3-b

Two online shopping platforms collect buyers' consent to communicate their contact details to other companies so that they can send them promotional offers. They use different texts:

- Platform A: "I agree that [the Company] may transmit my contact details to partners."



Private Sector

Example	Paragraphs concerned
<ul style="list-style-type: none"> <li>Platform B: "I authorize [the Company] to transmit my name and e-mail address to its affiliated e-commerce companies so that they can send me promotional offers."</li> </ul> <p><b>Platform B's more complete text is more likely to lead to informed consent than that of Platform A, which does not disclose the purpose of the communication and gives no indication of the identity of its partners.</b></p>	

### Example 3-c

A school service center (CSS) wants to fill a position involving working with vulnerable people. In this case, it is necessary to obtain a police clearance certificate. The CSS requires each candidate's consent for this purpose. The hiring form contains a section dedicated to consent to the communication of information to the police department and to communication to the CSS, by the police department, of the certificate of no criminal record that will be created.

**To ensure informed consent, the CSS includes essential information on the consent form:**

"CSS X [who?] needs your consent to share your contact details [what?] with Police Department Y [with whom?] to conduct a background search to certify that you can work with vulnerable people [why?]. This consent also covers the communication to CSS X by Police Department Y of the certificate of no criminal record [what?] Additional information is available in Appendix A.

I accept     I decline "

**Appendix A provides the rest of the information (rights, period of validity of consent, contact details for the Privacy Officer, etc.). This way of proceeding avoids overloading the consent application.**



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### Example 3-d

An accounting firm uses some of its clients' information for secondary purposes with their consent, which it obtains through the electronic file accessible on its Web site (collection by technological means). When consent is requested, the accounting firm states the purpose and specifies the categories of information covered by the request (identity information, financial information, etc.). It specifies that the consent is valid for the duration of the next fiscal year. It also includes a link to a privacy policy. By clicking on this link, the user accesses additional information (technical means for processing the information, explanation of the right to withdraw consent, etc.). **By placing this information at a second level, in an easily accessible privacy policy, the firm ensures**



Private Sector



Example	Paragraphs concerned
that an interested party can read the information before giving consent, while avoiding overloading the consent request. The consent obtained is therefore informed.	

### Example 3-e

To handle reports of harassment, incivility or sexual misconduct, a university collects information from complainants using a digital form. It provides an initial general text that explains the purpose of the collection, the persons to whom the complaint must be communicated to ensure that it is handled in accordance with the policy, and the mandatory nature of the information required to process the complaint (with the exception of the first and last name, requested on an optional basis). Rights of access and rectification are also indicated. At the end of the form, once the person making the report has pressed "Next", a separate page appears. Here, the university asks for consent to allow the Complaints Office to discuss the complaint with the management of the department concerned. Specific information about this consent is provided. **In providing this new information separately from the information required to process the complaint, the university ensures that it obtains informed consent from the complainant with regard to the communication of their personal information.**



Public Sector



Private Sector



### Example 3-f

To access the online services of an organization that uses a third-party authentication service, an individual must consent to the communication of certain identity information by the third party to the organization in question. In its privacy policy, easily accessible via a link on the consent page, **this organization points out that it is possible to chat with an agent who can explain the consent requested. A toll-free number is also provided to enable customers to speak with an agent over the phone during business hours. These mechanisms are part of the tools deployed by the organization to provide assistance to those in need.**

## Specific examples

Example	Paragraphs concerned
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### Example 4-a

A school obtains parental consent for the multidisciplinary team to communicate a child's information to a health care facility where he has recently been receiving complementary services. The consent form stated that parents consented to "any information" regarding their child being "potentially communicated" to "any other



Public Sector



Example	Paragraphs concerned
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person who might need it".

**The use of these imprecise terms compromises the informed nature of the consent of parents, as well as its specific nature. The school could specify:**

- **Purpose(s)** (e.g. "continuously adjust the child's care plan to his needs");
- **The categories of information concerned** (e.g. "Information on the child's psychomotor development");
- **Anticipated frequency of communication** (e.g. "twice a month");
- **The intended categories of recipients** (e.g. "the professionals assigned to the child's care at healthcare center X").



Private Sector

### Example 4-b

A union seeks the express consent of some of its members to use some of the information contained in active grievances to "*improve its processes*".

**This term is imprecise and takes away from the specific nature of the consent, as it does not make it possible to really understand the intended purpose. This purpose should be stated more clearly, depending on the context** (e.g. "to improve training for grievance staff", "to train artificial intelligence to automate certain steps in grievance processing", etc.).

4.3



Public Sector

### Example 4-c

An intermunicipal board is asked by a company to provide the last year's attendance record of one of its employees, who wishes to obtain a position there. The intermunicipal board's Director of Human Resources (DHR) contacts the employee in question to obtain her consent to share the file with the future employer, which the employee accepts. However, the DHR forwarded the employee's *complete* attendance record, covering four years of service. **In doing so, she failed to respect the specific consent obtained, which related exclusively to the communication of last year's attendance record. The DHR should have paid particular attention to the period in question. The intermunicipal board could adjust its procedures for managing personal information accordingly.**

4.4

## Examples of consent being "granular"

### Example

Paragraphs  
concerned

#### Example 5-a

An organization that subsidizes projects collects applications by means of a form. It wishes to request the consent of the persons concerned for two purposes: a) communication of the applicant's contact information to a broadcaster for the purpose of promoting selected projects; b) use of the e-mail address for the purpose of sending a survey. The form includes a consent section where both of these purposes are explained, but at the end of the form, a single "I accept" box and a single "I refuse" box are included.

**In so doing, the organization compromises the granular nature of consent, since it is asking for a single authorization for two purposes. It should be possible for an individual to consent to the communication of his or her contact information for promotional purposes, without consenting to the use of his or her e-mail address for survey purposes, or vice versa.**

5.3



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#### Example 5-b

A not-for-profit organization (NPO) organizes a gala to present awards recognizing the work of certain practitioners in its field of activity. It collects the e-mail addresses of nominees to inform them of their nomination and the details of the ceremony. It also asks nominees to consent to three secondary purposes: a) to use their e-mail address to contact them in order to assess their satisfaction after the event; b) to use their e-mail address to send them the organization's general newsletter; c) to allow the company designated by the organization to take the official photos of the winners to retain their e-mail address in order to offer them discounts on other photography services. **In order to respect the granular nature of consent, the NPO sets out these three purposes in a table that includes a "Yes" column and a "No" column. Candidates can accept or refuse each of these three purposes separately:**

5.3



Private  
Sector

"Do you consent to your address being :

	<u>Yes</u>	<u>No</u>
• Used to contact you to evaluate how satisfied were you after the event?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Used to send you our general newsletter?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Kept by the event's official photographer to offer you discounts on their services?	<input type="checkbox"/> Yes	<input type="checkbox"/> No



## Examples of comprehensibility

Example	Paragraphs concerned
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### Example 6-a

In a consent form related to the payment of financial aid, a public body uses the following formula:

"I hereby authorize the Ministère de l'Emploi et de la Solidarité du Québec to forward to the rehabilitation service provider, as soon as possible, all information related to the holding of an account with a financial institution in order to proceed, if applicable, with the payment of my financial assistance."

The public body reviewed its form, and made the following changes:

"I authorize the Ministère to transmit my bank account information to the rehabilitation center for the purpose of disbursing my financial assistance."

**This improves the conciseness and clarity of the message, without leaving out crucial information, thus making consent more comprehensible.**



Public Sector

### Example 6-b

An organization requests consent with the following text:

"The Customer consents to the automated analysis by the Company, including, but not limited to, historical transactional data for the purpose of determining a profile by machine learning model; said profile will be used by the Company to issue, without however formally committing to it and subject to its policies and procedures in force, personalized discount offers on the purchase price of certain products, provided that the Customer complies with the terms of use."

**This highly legal and technical text contains many words that are not part of everyday vocabulary, as well as a number of complex turns of phrase (long sentences, incises, etc.). It can confuse the person concerned, compromising his or her informed consent. The following text would be simpler, and therefore more understandable:**

**"Receive personalized offers** - I authorize the company to use my purchase history to determine my buyer profile using an artificial intelligence system. The company may choose to send me personalized discount offers tailored to my profile if I comply with the application's terms of use."



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### Example 6-c

An organization reviews its consent procedures according to a schedule defined in its governance rules. The committee formed to conduct this review notes that requests for consent are usually introduced by vocabulary referring to "knowledge"



All Sectors



Example	Paragraphs concerned
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rather than authorization: "I am *aware* that information X will be used [...]" or "I am aware that information X will be used [...]". "I *understand* that information Y will be communicated to [...]"

**To clarify them, the committee modifies this so that the verbs clearly evoke consent: "I *consent* to [...]", "I *accept* that [...]" or "I *accept* that [...]". "I *authorize* the use of [...]"**

The committee also notes that, in Web interfaces, express consent options do not reflect the consent situation (acceptance or refusal): "Next", "Ignore", etc. **On the recommendation of its committee, the organization is standardizing the options to present a choice between "Yes" and "No" as often as possible**, or, if not, "I accept/I consent/I agree" and "I refuse/I do not consent/I do not agree".

**With these changes, the organization is moving towards clearer, simpler language and promoting the comprehensible, informed and free nature of consent.**

### Example 6-d

At the request of an Indigenous nation that is stepping up efforts to revitalize its language, a team of researchers is conducting a linguistic study. It conducted an in-depth study of the nation's elders, in partnership with an indigenous cultural institute. To enable data analysis, the words of these elders are recorded in different situations (outing on the land, family discussion, craft session, etc.). In particular, participants are invited to tell a traditional story. The cultural institute would like to ask participants to agree that recordings of these stories can also be broadcast on a section of its website dedicated to the nation's language and the preservation of its intangible cultural heritage. To do this, a form in French is used. However, some of the older participants speak very little French. **In the particular context of this research, in order to ensure that the consent request is adapted to the concerned individuals, and so that it is understandable to them, the cultural institute appointed a bilingual agent to collect verbal consent of these participants and to answer their questions, if necessary.**



Public Sector

### Example 6-e

A company offers a photo-sharing application to a very diverse population, including 14 to 17 year-olds. To ensure that its consent procedures are clear to them, it conducts comprehension tests with a representative group of young people and makes the necessary changes. **By adapting the texts to the literacy level of the teenagers, the company increases the likelihood that the texts will be comprehensible to the majority of those concerned, no matter how old they are.**



Private Sector

## Example of the temporary nature of consent

Example	Paragraphs concerned
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### Example 7-a



As part of its process for hiring professionals, an organization asks candidates to provide two references, which can be consulted to assess the candidate's work in previous positions, in addition to information on the evaluations in the candidate's file. An electronic form is provided for submitting references. **Wishing to be transparent about how long consent is valid, the organization informs candidates that their consent is valid only until a decision is made with regard to their application. As such, consent is delimited by an event.**



## Examples of distinctness

Example	Paragraphs concerned
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### Example 8-a



A professional order has a "change of status" form, which provides the following:

1. "I acknowledge having read the instructions [...].
  2. I declare that the information provided is complete and accurate.
  3. I agree that the Order may share my information with marketing firm ABC [...].
  4. I undertake to notify the order of [...].
- Signature: \_\_\_\_\_"



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

Example	Paragraphs concerned
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**"Consent.** I agree that the Order may share my information with ABC [...].

Yes     No

By signing this form :

1. I acknowledge having read the instructions [...].
2. I declare that the information provided is complete and accurate [...].
3. I undertake to notify the order of [...].

Signature: \_\_\_\_\_"

### Example 8-b

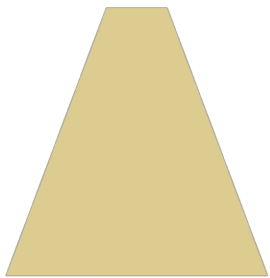
When creating an account for an online game, players are asked to tick a box stating that they accept the terms of use, to which a hypertext link leads. However, no reference to consent is included in the form. By clicking on the link, a player can discover that the conditions of use contain, among other things, the publisher's privacy policy. It is mentioned in the text that by accepting the terms of use, the player notably consents to the use of his friends list, the metadata on his device, his interactions with the game (clicks, times, etc.) and his conversations on the public server for the purposes of targeted advertising, improving the game experience and combating cheating. He also consents to the publication of his score in the game on a public platform, along with his pseudonym and the history of his games, in order to stimulate competition in the game.

**On the specific question of consent, the fact that this information is integrated into a privacy policy that is itself included within conditions of use that concern a variety of other subjects compromises the distinct character of consent. What's more, this situation threatens the manifest nature (act of consenting indissociable from the act of accepting the conditions of use), free nature (granular refusal impossible), and informed nature of consent (information difficult to access).**

8.1  
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8.2



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