

Everything You Need To Know About The

# Right to Data Portability

April 2024

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# Data Portability Principles

The new right to data portability, introduced by the *Act to modernize legislative provisions respecting the protection of personal information* ("Law 25," fka "Bill 64"), is an extension of the right of access to personal information under the *Act respecting the protection of personal information in the private sector* (the "Private Sector Act") and the *Act respecting access to documents held by public bodies and the Protection of personal information* (the "Access Act"). As of September 22, 2024, upon request, organizations will be required to communicate to individuals, in a structured and commonly used technological format, computerized personal information they have collected from them. This communication may also be made to a person or organization authorized to collect the information, at the request of the applicant.



## September 2022

- Appointment of a Privacy Officer
- New privacy breach notification requirements
- Biometrics



## September 2023

- Governance policies
- Privacy impact assessments
- Right to de-index
- Consent requirements
- Transparency
- Requirements for automated decision making
- Confidentiality by default
- Requirements for cross-border data transfers
- Penalties for non-compliance

## Private Sector Act\*

### DIVISION IV

#### ACCESS BY PERSONS CONCERNED

##### § 1. — General provisions

**27\*.** *Every person carrying on an enterprise who holds personal information on another person must, at the request of the person concerned, confirm the existence of the personal information, communicate it to the person and allow him to obtain a copy of it.*

*At the applicant's request, computerized personal information must be communicated in the form of a written and intelligible transcript.*

*Unless doing so raises serious practical difficulties, computerized personal information collected from the applicant, and not created or inferred using personal information concerning him, must, at his request, be communicated to him in a structured, commonly used technological format. The information must also be communicated, at the applicant's request, to any person or body authorized by law to collect such information.*

*If the person concerned is handicapped, reasonable accommodation must be provided on request to enable the person to exercise the right of access provided for in this division.*

\*s.84 Access Act

Annotated Law [here](#)



## September 2024

- Right to data portability

# Processing Data Portability Request



## Eligible Data

Computerized personal information collected from the applicant.

(s.27 Private Sector Act / s.84 Access Act)

Applicant's identity must be verified.

(s.30 Private Sector Act / s.94 Access Act)

## Identification



## Format Requirement

Data must be transferred in a structured, commonly used technological format.

(s.27 Private Sector Act / s.84 Access Act)

Data must be transferred within **30 days** of receiving the request.

(s.32 Private Sector Act / s.98 Access Act)

## Response Time



## Data Recipients

Authorized recipients include: the applicant, any person at the request of the applicant, any organization authorized by law to collect the information, spouse or close relative of the deceased applicant\*.

(s.27, 40.1 Private Sector Act)

Organizations must assist applicants in identifying the information they wish to receive.

(s.30 Private Sector Act / s.95 Access Act)

## Providing Assistance



## Related Charges

Organizations may request a reasonable fee for the transcription, reproduction or transmission of the data.

(s.33 Private Sector Act / s.85 Access Act)

Confidential commercial information, personal information about a third person, improper requests, serious practical difficulties.

(s.27, 40, 46 Private Sector Act)

## Restrictions



## Access Act

The possible **recipients** of a portability request and the **restrictions** on portability are more numerous under the Access Act (see ss. 67.2 to 68 for recipients and ss. 86 to 88 for restrictions).

Watch for updates: the *Regulation respecting fees for the transcription, reproduction or transmission of documents or personal information* could be amended to take into account the new right to portability.



Fees may be challenged before the CAI.

# Eligible Data

## Computerized Personal Information

Only personal information that has been collected from the applicant in computerized form may be the subject of a portability request.

This may include data such as :



Identifiers



Health data



Email



Financial data



Phone number



Function related data

### Definition (s. 1 Private Sector Act)\* :

The Act applies to personal information regardless of its medium and regardless of the form in which it is accessible, whether **written, graphic, taped, filmed, computerized, or other.**



- The Private Sector Act does not offer a specific definition
- The right to data portability, as provided for in the Act, does not support the concept of **technological neutrality**, since only **computerized** personal information can be the subject of a portability request.

\*S.1 Access Act



**Function related data:** Section 1 (3) of the Privacy Sector Act provides that personal information held by a professional order, a political party (or independent members) is subject to the data portability right.

Data kept in physical format is not computerized personal information.

For example :



Paper forms



Non-digital photographs



Handwritten notes

This may also include data generated by online activity:



Activity logs



Purchase history



Research data

# Format Requirements



Data must be transferred in the form of a **written and intelligible transcript**

(s.27 para. 1 Private Sector Act / s.84 para. 2 Access Act)



Sections 19 and 23 of the Act to establish a legal framework for information technology provide further clarification of these concepts

## Written

- Accessible by any means of writing.
- Examples: Latin alphabet, pictogram, etc.

## Intelligible

- Data that can be understood by a person.
- Encrypted information is not intelligible.



Data must be transferred using a **structured and commonly used technological format**

(s.27 para. 2 Private Sector Act / s.84 para. 3 Access Act)



No specific definition, but some pointers from the [EDPB](#) (European Data Protection Board)

## Technological Format

Open formats such as JSON, CSV, XML, along with their metadata, are considered portability compliant.

## Structured, Commonly Used and Technological

The terms "structured", "commonly used" and "technological" ("machine-readable" under the GDPR) are requirements to facilitate the interoperability of systems.

- As of September 2023, section 3.3 of the Private Sector Act (s. 63.5 Access Act) stipulates that all enterprises must carry out a **privacy impact assessment** for any project involving personal information
- Both the Private Sector Act and the Access Act require that any new project or system allow personal information to be communicated in a **structured, commonly used technological format**
- These **new requirements**, in effect since 2023, precede the coming into force of the right to data portability

# Restrictions to the Right to Data Portability

## Confidential Commercial Information

- Restrictions on information created or inferred from collected personal information.
  - Product or content recommendations based on a user's purchase or browsing history

(s.27 Private Sector Act / ss.12, 84 Access Act)

## Information About a Third Person

- Exclusion when likely to reveal personal information about a third person and such disclosure would seriously harm the third person, except with the third person's consent or in cases of urgency
  - Transmitting a file containing political opinions shared in online discussions that risk revealing the political affiliations of other users who participated in the discussions

(s.40 Private Sector Act / s.88 Access Act)

## Improper Requests

- Right to refuse requests that are obviously improper by reason of their number, repetitious or systematic nature or applications are not consistent with the object of this Act, subject to authorization by the Commission d'accès à l'information (CAI)

(s.46 Private Sector Act / s.1371 Access Act)

## Serious Practical Difficulties

- Right to refuse requests where it would raise serious practical difficulties
  - High costs to meet the request and/or complexity of the transfer

(s.27 Private Sector Act / s.84 Access Act)

## Access Act

Restrictions\* on portability under the Access Act also include:

- Information contained in an opinion/ recommendation awaiting final decision (s. 86.1)
- Information whose release would reveal information prohibited by other laws (s. 87)
- Certain health care institutions may temporarily refuse the request if it is detrimental to the health of the person concerned (s. 87.1).

\*This is a non-exhaustive list of restrictions, which will likely be better defined via guidelines for both the Private Sector Act and the Access Act.

# Remedies and Penalties

## Examination of Disagreements at the CAI

- If the portability request has been refused, if it has not been processed within the given timeframe or if it only partially responds to the request, the applicant may petition the CAI for a review of the decision. The CAI has the power to issue orders to correct the situation as it sees fit.

(s.42 Private Sector Act)

## Administrative Monetary Penalties (AMPs)

- The CAI can impose AMPs on organizations that infringe the Private Sector Act (maximum amount of \$10,000,000 or 2% of worldwide turnover)
- Such an AMP could therefore be imposed on an enterprise that has failed in its obligation to inform or process data subjects of their right to portability

(s.90.1 Private Sector Act et le General framework for the application of administrative monetary penalties)



The [General Framework](#) establishes that AMPs are intended to allow the CAI to intervene when a failure to comply is detected, to encourage companies to **take prompt action** to comply with the Private Sector Act and to **deter companies** from repeating a failure.

## Punitive Damages

- Where the unlawful infringement of the right to data portability causes an injury and the infringement is intentional or results from a gross fault, the court can award punitive damages (minimum amount of \$1,000)

(s.93.1 Private Sector Act)



The Commission d'accès à l'information (the "CAI") is Quebec's privacy regulator.

## Access Act

### Request for review

An applicant who is unsatisfied with the response to a portability request may file an **application for review** of the organization's decision with the CAI (s.137).

### Penal sanctions

Penalties of 1,000 to \$30,000 when the organization refuses or hinders access to a document or information accessible under the Access Act (s.158).

### Punitive damages

Punitive damages of at least \$1,000 may be awarded in cases of intentional infringement or gross fault causing injury (s.167).



Questions remain as to how the CAI will use their new powers, and regarding the interplay between the various recourses and sanctions now found in the Private Sector Act.



# Recommendations

## Inventory

Identify the computerized personal information you hold that could be subject to the right to data portability.



## Systems

Set up information systems enabling data to be transferred in a structured, commonly used technological format.



## Transparency

Inform individuals of their right to data portability and the related terms of application (including in privacy policies and, if applicable, any other data protection policies).



## Processes

Update internal processes relating to access to personal information or, if applicable, specific to the right to data portability (under the GDPR, for example).



## Security

Evaluate the security measures in place to ensure the protection of computerized personal information in transit.



## Training

Train staff to recognize a data portability request and process it in accordance with the law.



## Monitoring

Document all requests for data portability and related details for statistical purposes (processing time, exemptions used, examination of disagreements, etc.).



# Key Contacts

Our team is available for any question related to the changing privacy landscape in Canada. Please feel free to contact us at any time to examine your practices and processes.



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## Resources

[Law 25: Annotated Private Sector Act](#)

[Legal Bases for Processing Personal Information in Quebec](#)

[Biometrics and Compliance: Navigating Québec's Legal Framework](#)

[Anonymization Regulation in Quebec: What You Need To Know](#)

[Canadian Privacy Breach Notification Requirements: An Overview](#)

[Law 25 Survey Report: Are Organizations Ready for Québec's New Privacy Legislation?](#)

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