

MEMORANDUM OF UNDERSTANDING BETWEEN THE PRIVACY COMMISSIONER
OF CANADA AND THE AUTORITEIT PERSOONSGEGEVENS ON MUTUAL
ASSISTANCE IN THE ENFORCEMENT OF LAWS PROTECTING PERSONAL
INFORMATION IN THE PRIVATE SECTOR

The Privacy Commissioner of Canada (“PCC”) and the Autoriteit Persoonsgegevens (“AP”) (“the Participants”):

RECOGNIZING the nature of the modern global economy, the increase in circulation and exchange of personal information across borders, the increasing complexity and pervasiveness of information technologies, and the resulting need for increased cross-border enforcement cooperation;

RECOGNIZING that both the OECD Recommendation on Cross-Border Co-operation in the Enforcement of Laws Protecting Privacy and the APEC Privacy Framework call on member countries and economies to develop cross-border information sharing mechanisms and bilateral or multilateral enforcement cooperation arrangements; and

RECOGNIZING that s. 23.1 of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 authorizes the PCC to share information with authorities from other countries that have responsibilities relating to the protection of personal information in the private sector;

RECOGNIZING that according to article 50 of the the *General Data Protection Regulation (GDPR) on the protection of individuals with regard to the processing of personal data and on the free movement of such data* the AP can in relation to third countries such as Canada, take appropriate steps to provide international mutual assistance in the enforcement of legislation for the protection of personal data, including through notification, complaint referral, investigative assistance and information exchange, subject to appropriate safeguards for the protection of personal data and other fundamental rights and freedoms. Subsection 1 and 2 of Section 2:5 of the *Dutch General Administrative Law Act (de Algemene wet bestuursrecht (Awb))* also provide that a person who is involved in the execution of the task of a Dutch public body may disclose confidential information if this is necessary to fulfill the supervisory task of the Dutch public body;

RECOGNIZING that the Participants have similar functions and duties with respect to the protection of personal information in the private sector in their respective countries; and

RECOGNIZING that the privacy laws of the Participants' countries restrict the exchange of personal information and that a request for personal information or an exchange of personal information under this memorandum must meet the requirements of the privacy laws of the Participants' countries.

HAVE REACHED THE FOLLOWING UNDERSTANDING:

I. Definitions

For the purposes of this Memorandum,

- A. "Applicable Privacy Law" means the laws and regulations of the Participant's country the enforcement of which have the effect of protecting personal information. In the case of the PCC, "Applicable Privacy Law" means Part 1 of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 ("PIPEDA") and, in the case of the AP it means the *General Data Protection Regulation (GDPR) on the protection of individuals with regard to the processing of personal data and on the free movement of such data* and the *Dutch General Data Protection Regulation Implementation Act (Uitvoeringswet Algemene verordening gegevensbescherming)*; as well as any amendments to the Participants' Applicable Privacy Laws, and such other laws or regulations as the Participants may from time to time jointly decide in writing to be an Applicable Privacy Law for purposes of this Memorandum.
- B. "Covered Privacy Contravention" means conduct that would be in contravention of the Applicable Privacy Laws of one Participant's country and that is the same or substantially similar to conduct that would be in contravention of the Applicable Privacy Laws of the other Participant's country.
- C. "Person" means any natural person or legal entity, including any corporation, unincorporated association, or partnership.
- D. "Request" means a request for assistance under this Memorandum.
- E. "Requested Participant" means the Participant from which assistance is sought under this Memorandum, or which has provided such assistance.
- F. "Requesting Participant" means the Participant seeking or receiving assistance under this Memorandum.

II. Objectives and scope

- A. The Participants understand that it is in their common interest to:
1. cooperate with respect to the enforcement of the Applicable Privacy Laws, including the sharing of relevant information and the handling of complaints in which the Participants are mutually interested;
 2. facilitate research and education related to the protection of personal information;
 3. promote a better understanding by each Participant of economic and legal conditions and theories relevant to the enforcement of the Applicable Privacy Laws; and
 4. keep each other informed of developments in their respective countries having a bearing on this Memorandum.
- B. In furtherance of these common interests, and subject to Section IV, the Participants will use best efforts to:
1. share information that a Participant believes would be relevant to ongoing or potential investigations or proceedings in respect of Covered Privacy Contraventions of the Applicable Privacy Laws of the other Participant's country;
 2. exchange and provide relevant information in relation to matters within the scope of the Memorandum, such as information relevant to consumer and business education; government and self-regulatory enforcement solutions; amendments to relevant legislation; and staffing and resource issues; and
 3. arrange for short-term and, possibly, long-term staff exchanges to facilitate and develop enforcement cooperation between the Participants.
- C. In furtherance of these common interests, and subject to Section IV, the Participants recognize the following item as a priority issue for potential cooperation:
1. potential parallel or joint investigations or enforcement actions by the Participants.

III. Procedures Relating to Mutual Assistance

- A. Each Participant will designate a primary contact for the purposes of requests for assistance and other communications under this Memorandum.
- B. In requesting assistance in procedural, investigative and other matters involved in the enforcement of Applicable Privacy Laws across borders, Participants will ensure that:
 - 1. Requests for assistance include sufficient information to enable the Requested Participant to determine whether a request relates to a Covered Privacy Contravention and to take action in appropriate circumstances. Such information may include: a description of the facts underlying the request; a description of the conduct or suspected conduct with reference to the potential contravention which gives rise to the request; the relevant statutory provision to which the potential contravention relates; the type of assistance sought; and an indication of any special precautions that should be taken in the course of fulfilling the request.
 - 2. Requests for assistance specify the purpose for which the information requested will be used.
 - 3. Prior to requesting assistance, Participants perform a preliminary inquiry to ensure that the request is consistent with the scope of this Memorandum and does not impose an excessive burden on the Requested Participant.
- C. Participants intend to communicate and cooperate with each other, as appropriate, about matters that may assist ongoing investigations.
- D. The Participants will notify each other without delay, if they become aware that information shared under this Memorandum is not accurate, complete, and up-to-date.
- E. Subject to Section IV, Participants may, as appropriate and subject to their Applicable Privacy Laws, refer complaints to each other, or provide each other notice of possible Covered Privacy Contraventions of the Applicable Privacy Laws of the other Participant's country.
- F. Participants will use their best efforts to resolve any disagreements related to cooperation that may arise under this Memorandum through the contacts designated under Section III. A, and, failing resolution in a reasonably timely manner, by discussion between the heads of the Participants.

IV. Limitations on Assistance and Use

- A. The Requested Participant may exercise its discretion to decline the request for assistance, or limit or condition its cooperation, in particular, where it is outside the scope of this Memorandum, or more generally, where it would be inconsistent with domestic laws, or important interests or priorities. The Requesting Participant may request the reasons for which the Requested Participant declined or limited assistance.
- B. Participants will only share personal information pursuant to this Memorandum to the extent that it is necessary for fulfilling the purposes of this Memorandum.
- C. For greater certainty, the PCC will not share confidential information unless
 - a. it is necessary for the purpose set out in Section II.B.1; or
 - b. it is necessary for making a request for assistance from the other Participant regarding information that may be useful to an ongoing or potential investigation or audit under Part 1 of *PIPEDA*.
- D. Participants will not to use any information obtained from the Requested Participant for purposes other than those for which the information was originally shared.

V. Confidentiality

- A. Information shared under this Memorandum is to be treated as confidential and will not be further disclosed without the consent of the other Participant, unless the disclosure is required by law or court order.
- B. Each participant will use best efforts to safeguard the security of any information received under this Memorandum and respect any safeguards agreed to by the Participants. In the event of any unauthorized access or disclosure of the information, the Participants will take all reasonable steps to prevent a recurrence of the event and will promptly notify the other Participant of the occurrence.
- C. The Participants will oppose, to the fullest extent possible consistent with their countries' laws, any application by a third party for disclosure of confidential information or materials received from Requested Participants, unless the Requested Participant consents to its release. The Participants who receives such an application will notify forthwith the Participant that provided it with the confidential information.

VI. Changes in Applicable Privacy Laws

In the event of significant modification to the Applicable Privacy Laws of a Participant's country that are within the scope of this Memorandum, the Participants will use best efforts to consult promptly, and, if possible, prior to the entry into force of such enactments, to determine whether to amend this Memorandum.

VII. Retention of Information

Information received under this Memorandum will not be retained for longer than is required to fulfil the purpose for which it was shared or than is required by the Requesting Participant's country's laws. The Participants will use best efforts to return any information that is no longer required if the Requested Participant makes a written request that such information be returned at the time it is shared. If no request for return of the information is made, the Requesting Participant will dispose of the information using methods prescribed by the Requested Participant or if no such methods have been prescribed, by other secure methods, as soon as practicable after the information is no longer required.

VIII. Costs

Unless otherwise decided by the Participants, the Requested Participant will pay all costs of executing the Request. When the cost of providing or obtaining information under this Memorandum is substantial, the Requested Participant may ask the Requesting Participant to pay those costs as a condition of proceeding with the Request. In such an event, the Participants will consult on the issue at the request of either Participant.

IX. Duration of Cooperation

- A. This Memorandum supersedes the previous Memorandum of Understanding signed between the Participants that entered into force on January 16, 2012 and takes effect on the date it is signed.
- B. Assistance in accordance with this Memorandum will be available concerning Covered Privacy Contraventions occurring before as well as after this Memorandum is signed.

- C. This Memorandum may be terminated on 30 days written notice by either Participant. However, prior to providing such notice, each Participant will use best efforts to consult with the other Participant.
- D. On termination of this Memorandum, the Participants will, in accordance with Section V, maintain the confidentiality of any information communicated to them by the other Participant in accordance with this Memorandum, and return or destroy, in accordance with the provisions of Section VII, information obtained from the other Participant in accordance with this Memorandum.

X. Legal Effect

Nothing in this Memorandum is intended to:

- A. Create binding obligations, or affect existing obligations under international law, or create obligations under the laws of the Participants' countries.
- B. Prevent a Participant from seeking assistance from or providing assistance to the other Participant pursuant to other agreements, treaties, arrangements, or practices.
- C. Affect any right of a Participant to seek information on a lawful basis from a Person located in the territory of the other Participant's country, nor is it intended to preclude any such Person from voluntarily providing legally obtained information to a Participant.
- D. Create obligations or expectations of cooperation that would exceed a Participant's jurisdiction.

Signed in duplicate in the English and French languages, each version being equally authentic.

Aleid Wolfsen
Chairman
Autoriteit Persoonsgegevens

Daniel Therrien
Privacy Commissioner of Canada

Date: December 22, 2021

Date: November 19, 2021

At: Den Haag, The Netherlands

At: Gatineau, Quebec