



FIPPA AND RESEARCH

ADVICE, NOT DECISIONS

The SFU Access and Privacy program advises employees and departments about how to comply with BC's *Freedom of Information and Protection of Privacy Act* (FIPPA). The following is advice. Employees or departments can choose to not follow the advice and assume the risks of non-compliance. Please contact privacy@sfu.ca for more information about the risks of non-compliance.

TWO HATS

A University instructor who is also a researcher is wearing two different hats: 1) as a University employee and University record holder (“**Instructor-A**”), and 2) as an independent Researcher (“**Researcher-A**”). Instructor-A is (generally) subject to FIPPA and Researcher-A is (generally) not¹. In this way, application of FIPPA is context specific.

*Example: **Instructor-A** creates and receives: email correspondence with students attending their class, records documenting their participation in a departmental committee, and memos from the Department Chair. These records are subject to FIPPA. **Researcher-A** creates and receives: records documenting their research (notes, calculations, data sets, draft publications). These records are not subject to FIPPA.*

Sometimes, records and information needs to pass from Instructor-A to Researcher-A, which is a meaningful transition from records in the custody and control of the University (records under FIPPA), to records in the custody and control of the researcher (records outside of FIPPA).

Example: Researcher-A would like to use student grades and survey results collected during previous semesters for their research project studying the relationship between grades and program satisfaction.

¹ FIPPA s.3(3)(i): “This Act does not apply to the following: [...] a record containing teaching or research materials [...]. Note that “teaching materials” are also exempt from FIPPA per this section. “Teaching materials” includes any records produced or compiled for distribution to students, to aid an instructor in relating information to students, or otherwise used to teach.



SOLICITATION AND CONSENT

Soliciting participation: Contacting an individual for the purpose of asking them to participate in research (the participation entails collecting new data from them).

Seeking FIPPA consent: Contacting an individual for the purpose of obtaining their consent to use their personal information contained in pre-existing SFU records for a research purpose.

SFU instructors have access to student email addresses in their role as University employees. These student email addresses are recorded personal information in the custody and control of the University, subject to the use and disclosure constraints in FIPPA. Instructor-A should not provide these email addresses to Researcher-A for the purposes of soliciting participation in their research study or for obtaining consent related to their research study.

In the past, solicitation emails have at times been sent out by the Deans (the University), on behalf of researchers (as a ‘use’ by the University rather than a ‘disclosure to and use by’ the researcher), which also serves to mitigate against any perceived pressure from the instructor on the students.

Another option for researchers that avoids using SFU email addresses is advertising with signs or posts online, or soliciting students during class. Students who voluntarily respond, using their SFU email addresses, have “disclosed” their personal information voluntarily to Researcher-A.

FIPPA consent elements: the consent must be in writing and it must set out what personal information they are providing their consenting for, how the personal information will be used and/or to whom it will be disclosed, the date the consent is affective and if applicable, the date the consent expires².

Note that if a FIPPA Disclosure Agreement is used (see below), the information is disclosed on condition that it not be used for the purpose of contacting a person to participate in the research.

USING SFU RECORDS FOR A RESEARCH PURPOSE

Should anyone seek to use SFU records for a research purpose, if the records contain personal information, and the researcher cannot reasonably get consent to use the records for the research, then they should enter into a FIPPA Disclosure Agreement with SFU about how they will use, secure, anonymize, and ultimately destroy the records, as required by s.33(3)(h) of FIPPA.

For a “**research purpose**” means for use in scientific research that may result in a publishable study or paper, but does not include research that is *exclusively* done for the internal purpose of evaluating or improving SFU programs.

² FIPPA Regulation s.11: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/155_2012#section11.



Flowchart: Does a Researcher Need a FIPPA Disclosure Agreement?

Q1. Does the researcher want to use pre-existing SFU records, containing personal information for a “research purpose” (see definition above)?

Yes → Got to Q2.

No → No FIPPA Disclosure Agreement needed.

Q2. Can the researcher obtain consent from the individuals to use those records for that purpose?

Yes → Obtain consent. No FIPPA Disclosure Agreement necessary (note privacy risks of using student email addresses to obtain consent, above).

No → Go to Q3.

Q3. Will the University department responsible for the records (not the researcher themselves) anonymize those records and give them to the researcher anonymized (see FAQ 2 below regarding anonymization)?

Yes → No FIPPA Disclosure Agreement needed. Researcher obtains and uses anonymized records.

No → Go to Q4.

Q4. Does the researcher already have access to the records they want to use (e.g. through Canvas)?

Yes → FIPPA Disclosure Agreement needed, as researcher does not have the authority to use those records for research purposes despite their current access (see ‘two hats’ discussion above).

No → FIPPA Disclosure Agreement need to disclose the records to the researcher.



FAQ

1. Why can't a researcher just anonymize the records they have access to themselves (e.g. through Canvas), without using a FIPPA Disclosure Agreement?

Answer: The University considers that activity to be non-compliant with the requirements of FIPPA s.33(3)(h), and a risk the University does not wish to promote.

2. When do records have to be anonymized vs. de-identified, and what is the difference?

Answer: **De-identification** means the removal of personal identifiers (names, student numbers, email addresses, etc.), but the information may still be re-identified (for example, through access to a key or other sources). **Anonymization** means the information cannot be re-identified (for example, the key has been destroyed).

When SFU agrees to remove identifiers in the records for the researcher before providing the records to the researcher, SFU should ensure the data is anonymized. If SFU cannot anonymize the records, only de-identify them, a FIPPA Disclosure Agreement should be used.

When SFU provides identifiable records to a researcher under a FIPPA Disclosure Agreement, the Agreement sets out the terms related to anonymization.