

Draft Regulations

Draft Regulation Gouvernement du Québec O.C. 783-2024, 1 May 2024

Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1)

Act respecting the protection of personal information in the private sector (chapter P-39.1)

Anonymization of personal information

Regulation respecting the anonymization of personal information

~~Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1) and section 156 of the~~ WHEREAS, under the first paragraph of section 73 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), that the Regulation respecting the anonymization of when the purposes for which personal information, appearing below, may be made by the Government on the expiry of 45 days following this publication. was collected or used have been achieved, the public body must destroy the information, or anonymize it to use it for public interest purposes, subject to the Archives Act (chapter A-21.1) or the Professional Code (chapter C-26);

~~The draft Regulation, for the purposes~~ WHEREAS, under the third paragraph of section 73 of the Act, information anonymized under the Act respecting Access to documents held by public bodies and the Protection of personal information and must be anonymized according to generally accepted best practices and according to the criteria and terms determined by regulation;

WHEREAS, under subparagraph 6.3 of the first paragraph of section 155 of the Act, the Government may make regulations for the purposes of section 73 of the Act, determining the criteria and terms applicable to the anonymization of personal information;

WHEREAS, under the first paragraph of section 23 of the Act respecting the protection of personal information in the private sector (chapter P-39.1), determines the criteria and terms applicable to the anonymization of where the purposes for which personal information was collected or used are achieved, the person carrying on an enterprise must destroy the information, or anonymize it to use it for serious and legitimate purposes, subject to any preservation period provided for by an Act;

~~The draft Regulation guarantees that the~~

WHEREAS, under the third paragraph of section 23 of that Act, information anonymized under the Act respecting the protection of personal information of citizens will in the private sector must be anonymized according to a rigorous process that will significantly reduce the re-identification risks associated with anonymization, thereby protecting the privacy of citizens; generally accepted best practices and according to the criteria and terms determined by regulation;

~~Since~~ WHEREAS, under subparagraph 3.2 of the first paragraph of section 90 of that Act, the Government, after obtaining the advice of the Commission d'accès à l'information, may make regulations, for the purposes of section 23 of the Act, to determine the criteria and terms applicable to the anonymization of personal information is optional, the draft Regulation will have an impact only on public bodies and on enterprises that choose to use anonymization;

WHEREAS, in accordance with section 156 of the Act respecting Access to documents held by public bodies and the Protection of personal information and the first paragraph of section 90 of the Act respecting the protection of personal information in the private sector, the Minister Responsible for Access to Information and the Protection of Personal Information obtained the opinion of the Commission d'accès à l'information on 19 October 2023;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1) and section 156 of the Act respecting Access to documents held by public bodies and the Protection of personal information, a draft Regulation respecting the anonymization of personal information was published in Part 2 of the *Gazette officielle du Québec* of 20 December 2023 with a notice that it could be made by the Government on the expiry of 45 days following that publication;

WHEREAS it is expedient to make the regulation with amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister Responsible for Access to Information and the Protection of Personal Information:

THAT the Regulation respecting the anonymization of personal information, attached to this Order in Council, be made.

DOMINIQUE SAVOIE

Clerk of the Conseil exécutif

Regulation respecting the anonymization of personal information

Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1, s. 155, 1st par., subpar. 6.3)

Act respecting the protection of personal information in the private sector (chapter P-39.1, s. 90, 1st par., subpar. 3.2)

DIVISION I

SCOPE AND DEFINITIONS

1. This Regulation applies to all public bodies referred to in section 3 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), and any person carrying on an enterprise and referred to in the Act respecting the protection of personal information in the private sector (chapter P-39.1).

It also applies to professional orders to the extent provided for in the Professional Code (chapter C-26).

2. In this Regulation,

“correlation criterion” means the inability to connect datasets concerning the same person;

“individualization criterion” means the inability to isolate or distinguish a person within a dataset;

“inference criterion” means the inability to infer personal information from other available information;

“body” means a public body, a person carrying on an enterprise or a professional order to which this Regulation applies.

DIVISION II

CRITERIA AND TERMS APPLICABLE TO THE ANONYMIZATION OF PERSONAL INFORMATION

3. Before beginning a process of anonymization, a body must establish the purposes for which it intends to use the anonymized **personal** information. The body must ensure that those purposes are consistent with section 73 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A 2.1) or section 23 of the Act respecting the protection of personal information in the private sector (chapter P 39.1), as the case may be.

If a body wishes to use anonymized information for purposes other than those established before beginning the process of anonymization in accordance with the first paragraph, the body must, before using that anonymized information, ensure that those purposes are consistent with, as the case may be, section 73 or section 23.

4. The process of anonymization must be carried out under the supervision of a person qualified in the field.
5. At the beginning of a process of anonymization, a body must remove from the information it intends to anonymize all personal information that allows the person concerned to be directly identified.

The body must then conduct a preliminary analysis of the re-identification risks considering in particular the individualization criterion, the correlation criterion and the inference criterion, as well as the risks of other **information** reasonably available information, in particular in the public space, being used to identify a person directly or indirectly.

6. On the basis of the re-identification risks determined in accordance with the second paragraph of section 5, a body must establish the anonymization techniques to be used, which must be consistent with generally accepted best practices. The body must also establish reasonable protection and security measures to reduce re-identification risks.
7. After implementing the anonymization techniques established for the process of anonymization and the protection and security measures in accordance with section 6, a body must conduct an analysis of the re-identification risks.

The results of the analysis must show that it is, at all times, reasonably foreseeable in the circumstances that the information produced further to a process of anonymization irreversibly no longer allows the person to be identified directly or indirectly.

For the purposes of the second paragraph, it is not necessary to demonstrate that zero risk exists. However, taking into account the following elements, the results of the analysis must show that the residual ~~risk~~ risks of re-identification ~~is~~ are very low:

- (1) the circumstances related to the anonymization of personal information, in particular the purposes for which the body intends to use the anonymized information;
 - (2) the nature of the information;
 - (3) the individualization criterion, the correlation criterion and the inference criterion;
 - (4) the risks of other ~~information~~ reasonably available information, in particular in the public space, being used to identify a person directly or indirectly; and
 - (5) the measures required to re-identify the persons, taking into account the efforts, resources and expertise required to implement those measures
8. A body must ~~regularly~~ periodically assess the information it has anonymized to ensure that it remains anonymized. For that purpose, the body must update the latest re-identification risk analysis ~~of the re-identification risks~~ it conducted ~~under section 7~~. The update must consider, in particular, technological advancements that may contribute to the re-identification of a person.

The results of the analysis update must be consistent with the second paragraph of section 7. If they are not, the information is no longer considered anonymized.

For the purposes of the first paragraph, the intervals at which a body must conduct information assessments are determined according to the residual risks identified in the latest re-identification risk analysis conducted by the body and the elements provided in the third paragraph of section 7.

9. A body that anonymizes personal information must record the following information in a register:
- (1) a description of the ~~anonymized~~ personal information that has been anonymized;
 - (2) the purposes for which the body intends to use anonymized ~~personal~~ information;
 - (3) the anonymization techniques used and the protection and security measures established in accordance with section 6; and
 - ~~(4) a summary of the results of the re-identification risk analysis conducted in accordance with section 7 or, as the case may be, section 8; and~~
 - ~~(5)~~ 4 the date on which the re-identification risk analysis conducted in accordance with section 7 was completed and, as the case may be, the date on which the update of the analysis conducted in accordance with section 8 was completed.

DIVISION III

FINAL

10. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*, except section 9 which comes into force on 1 January 2025.

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