

Legal Aid Ontario

---

# Privacy policy



LEGAL AID ONTARIO  

---

AIDE JURIDIQUE ONTARIO

# Privacy policy

---

**Title:** Privacy policy  
**Author:** Legal Aid Ontario, General Counsel  
**Last updated:** April 16, 2014

## Table of Contents

1. Application of FIPPA.....	1
1.1 Centralized decision-making under FIPPA .....	1
2. Solicitor-client privilege and confidentiality .....	1
3. Role of the Information and Privacy Commission .....	2
4. Guidelines .....	2
5. Application and other fees imposed by FIPPA .....	3
5.1 Application fee.....	3
5.1 Other fees .....	3
6. Collection of personal information.....	4
6.1 Privacy versus confidentiality .....	4
6.2 Limiting collection of personal information .....	5
6.3 Identification of legal aid applicants.....	5
7. Use and disclosure of personal information.....	5
7.1 What to do when inappropriate disclosure occurs .....	6
8. Dealing with a complaint about privacy.....	6
9. The right of access and correction by an individual regarding his/her personal information..	6
10. Retention and disposal of personal information (s. 40 of FIPPA and Regs.).....	7
11. Electronic records and e-mail.....	8
12. Legal aid records subject to FIPPA .....	9
12.1 Manuals and guidelines .....	9
12.2 Notices and memoranda .....	9
12.3 Staff records.....	9
12.4 Records about service providers and consultants.....	10
12.5 Opinion letters.....	10

13. Urgent circumstances .....	10
14. Timely responses .....	11
15. FIPPA Coordinator .....	11
16. Information available in area offices for public inspection .....	12
16.1 Information available in area offices for public inspection .....	12
16.2 Information available in provincial office for public inspection.....	12
16.3 Information that may routinely be disclosed.....	13
16.4 Information usually disclosed* .....	14
16.5 Information this is not disclosed* (breach of confidentiality or privacy) .....	15
17. Request for information flowchart .....	16

### Attachments

- Request for information flowchart
  - Privacy Policy\_Request for information.pdf

# Privacy policy

---

## 1. Application of FIPPA

With the coming into force of the *Legal Aid Services Act*, Legal Aid Ontario (LAO) was brought within those institutions covered by the *Freedom of Information and Protection of Privacy Act (FIPPA)* and, accordingly, subject to external scrutiny by the Information and Privacy Commissioner (IPC). The provincial administration, including staff offices, and the area offices are covered. However, as set out below, the number of records maintained by LAO that are subject to disclosure under *FIPPA* is limited. Reference to *FIPPA* is made in the new *Legal Aid Services Act (LASA)*, in s.84.

### 1.1 Centralized decision-making under FIPPA

Under *FIPPA*, the “head” of the institution is responsible for decisions made about disclosure and the administration of *FIPPA* requests. The President and CEO of LAO has been designated in the *FIPPA* regulation as the head of the institution. The head has delegated her decision-making powers under *FIPPA* to General Counsel and the administration of access requests to the *FIPPA* Coordinator, who is the Director, Appeals and FOI (s.62 of *FIPPA*).

## 2. Solicitor-client privilege and confidentiality

Almost all the records made and kept by Legal Aid Ontario are subject to an extended solicitor-client privilege provided by s.89 of the *Legal Aid Services Act* or to the confidentiality provision in s.90. **And those provisions** (in addition to s.92 relating to quality assurance audits) **prevail over *FIPPA*** (s.103 *LASA* and s.67(2) *FIPPA*).

89.(1) All legal communications between the Corporation, an officer or employee of the Corporation, an area director or member of an area committee and an applicant for legal aid services are privileged in the same manner and to the same extent as solicitor-client communications.

(2) All legal communications between a lawyer, student or service-provider at a clinic, student legal aid services society or other entity funded by the Corporation, or any other member, officer or employee of a clinic, student legal aid services society or other entity funded by the Corporation and an applicant for legal aid services are privileged in the same manner and to the same extent as solicitor-client communications.

90.(1) A member of the board of directors, an officer or employee of the Corporation, an area director, a member of an area committee, a lawyer, a service-provider or a

member, officer, director or employee of a clinic, student legal aid services society or other entity funded by the Corporation *shall not disclose or permit to be disclosed any information or material furnished to or received by him or her in the course of his or her duties or in the provision of legal aid services* (italics added).

(2) A person referred to in subsection (1) may disclose information or allow it to be disclosed in the performance of his or her duties or in the provision of legal aid services or with the consent of the applicant or if authorized by the Corporation.

#### Important notice

Accordingly, **all of our records that are subject to solicitor-client privilege or to the very broad confidentiality provision in s.90 are not subject to access under FIPPA and may be disclosed only with the consent of the client (s.89) or in accordance with s.90(2) of LASA**, that is, when necessary in the performance of legal aid duties, with the consent of the client or by authorization by the Corporation. **The guidelines appended to this policy will tell you when you may disclose this information.**

### 3. Role of the Information and Privacy Commission

The Information and Privacy Commission (IPC) may still be involved in our decision-making when a record is requested that, in our view, falls within the provisions relating to solicitor-client privilege or confidentiality. **Although we may properly refuse to disclose information that falls within those provisions, a requester who wishes to pursue access to that information should be given a FIPPA access form (copy attached), or be asked to put the request in a letter, so that a formal written request may be made, thus giving a requester access to the appeal procedure under FIPPA.** The Information and Privacy Commissioner retains jurisdiction to determine whether or not the information requested falls within the scope of the provisions (relating to solicitor-client privilege or confidentiality in LASA) that prevail over FIPPA.

### 4. Guidelines

**Area office and provincial office staff may deal directly with standard requests** for the disclosure of certain routine information in accordance with the **appended guidelines**.

If a request is made for information not covered in the guidelines, a FIPPA request form should be given to the requester or the requester should be asked to put the request in writing and

send it to the *FIPPA* Coordinator. When the guidelines indicate that disclosure is not granted, staff should so inform the requester but also advise the requester that he or she has a right to make a formal request under *FIPPA*. The completed request form or letter should be sent at once to the *FIPPA* Coordinator. (In that way, the head of LAO will make the final decision as to whether *FIPPA* applies and whether disclosure should be granted, giving the requester a right of appeal to the IPC.)

## **5. Application and other fees imposed by FIPPA**

### **5.1 Application fee**

An application fee is required for all formal, written requests under *FIPPA* (s.24(c), *FIPPA*). Currently, the application fee is \$5.00. Accordingly, should an individual wish to pursue a request for information from LAO through *FIPPA*, you should provide him or her with the request form, or ask that he or she put the request in writing and require payment of the application fee of \$5.00. The area offices may either request payment of \$5.00 cash, in which case, a receipt should be provided to the individual with the notation that the funds are “miscellaneous income”, or if it is convenient for the applicant, require that the applicant send a cheque in the amount of \$5.00, made out to Legal Aid Ontario, to the *FIPPA* Coordinator together with the completed request form. If you are collecting \$5.00 in cash, please forward a copy of the receipt to the *FIPPA* Coordinator so that we will know that payment has been made.

A verbal request for information may be granted informally in accordance with the appended guidelines without the payment of an application fee.

### **5.1 Other fees**

In addition, s.57 of *FIPPA* requires a requester to pay fees for costs including the cost of every hour of manual search required to locate a record and the cost of copies. There is a provision permitting the head to waive payment of all or part of the costs if in the head’s opinion (a decision reviewable by the IPC) it is fair and equitable to do so after considering, for example, the financial hardship for the person requesting the record. **Please contact the *FIPPA* Coordinator to discuss imposing a fee for copies or locating a record.**

For copies of records about themselves which we would ordinarily disclose to applicants or staff of Legal Aid Ontario, a fee will not be charged unless the search for or copying the record requires more than 2 hours time or there are more than 50 pages to be copied. In those circumstances, the fee provided under the *FIPPA* Regulation will be charged (\$7.50 per 15 minutes search time and 20 cents per page).

## 6. Collection of personal information

Section 84 of *LASA* gives LAO the authority to collect personal information for the purpose of carrying out its duties and exercising its powers under the Act. Accordingly, a notice has been placed on our application forms indicating that personal information is collected under the authority of *LASA*, that it will be used for the following purposes: determining eligibility for legal aid, to allow for the collection/enforcement of any debt to legal aid, and to identify low income individuals and disadvantaged communities and assess their legal needs. The notice also advises that any questions about collection of personal information may be directed to the *FIPPA* Coordinator.

Similar notices appear in other documents which LAO uses to collect personal information, such as the contribution agreement and the panel enrollment form for lawyers.

Personal information is defined in *FIPPA* as recorded information about an identifiable individual and includes information relating to the race, national or ethnic origin of an individual, his or her religion, age, sex, sexual orientation, marital or family status, address, telephone number, information relating to his or her education or medical, psychiatric, criminal or employment history or financial transactions in which the individual has been involved. Personal information also includes the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information assigned to the individual (s.2(1)). This list is not exhaustive.

### 6.1 Privacy versus confidentiality

The above discussion reflects LAO's duties regarding confidentiality. Confidentiality is the requirement that personal information not be disclosed to anyone outside LAO, except in accordance with the legislative requirements of *FIPPA* and *LASA*.

Privacy is a concept which encompasses confidentiality but extends beyond it. Privacy addresses the ways in which an organization collects, uses and discloses personal information, the right of an individual to control the use, collection and disclosure of his or her personal information, the right to have access to his or her personal information and the right to have it corrected, if necessary.

In the context of LAO, it is important to understand that staff of legal aid must have an appropriate business purposes in order to access the personal information of a legal aid applicant or other individual whose personal records we hold, including lawyers and other service providers. **Staff may not access information simply because they may be curious to learn more about a particular person or case. Staff may only access records for a required business purpose.** Auditing mechanisms in TSN may be established to ensure that these restrictions are being respected.

## 6.2 Limiting collection of personal information

Staff should also understand that there are limits to the personal information that may be collected from a legal aid applicant. The questions asked of an applicant must be necessary to the application process. Collection of additional personal details which may be helpful, but are not required, should be avoided.

Staff should have regard to the fact that an individual has a right of access to the information in their file, including the notes and attachments made by legal aid staff. Inappropriate personal observations should not be recorded in a legal aid applicant's file in any free text section. Nor should detailed personal information about other legal aid applicants be placed in the file of a legal aid applicant who may be a co-accused or a related person. Whenever free text sections are allowed in TSN, please confine the use of free text to recording required business information. Although an applicant may provide additional personal information, only that which is required for the legal aid application process should be recorded.

## 6.3 Identification of legal aid applicants

In keeping with these considerations, LAO no longer allows collection of the health card, even where the applicant offers it as a form of identification. Do not record the health card information of an individual, as to do so is not permitted by the *Health Cards and Numbers Control Act, 1991*. The policy of LAO regarding collection of the social insurance number (SIN) has also changed. Staff may request identification from legal aid applicants, but may not specify that LAO wishes to see the SIN. Where the SIN is offered, it may be recorded in TSN as the form of identification provided by the applicant. However, LAO policies no longer permit searching for a particular individual using the SIN. Searches for a particular applicant should be conducted using the name and address of a person and the identification numbers assigned by TSN.

The SIN is collected in the contribution agreement because it may be required to enforce the agreement in future, if the legal aid applicant defaults.

## 7. Use and disclosure of personal information

As noted above, LAO is permitted to collect personal information. We are not entitled, however, to disclose it except in accordance both with *LASA* and with *FIPPA*. There are prohibitions against disclosure of personal information in *FIPPA*. Our disclosure of personal information must, therefore, not only be in accordance with the confidentiality provisions and extended solicitor-client privilege in *LASA* but also be in accordance with *FIPPA*.

Sections 41, 42 and 43 of *FIPPA* govern the use and disclosure that may be made of the personal information which LAO collects. The *FIPPA* statement in the application form, which is signed by the client, entitles us to collect and use personal information for the purposes



specified. This includes, for example, verification of financial information. We also have each applicant sign a *consent to inspect* form, which provides specific consent to verification of financial information. Personal information may only be used for a purpose to which the client has specifically consented, the purpose for which the personal information was obtained, or a consistent purpose. *FIPPA* provides that a consistent use or disclosure is one which the individual might reasonably have expected when the information was collected. If you have any doubt about whether a proposed use or disclosure of personal information is consistent with the basis upon which it was collected, contact the *FIPPA* Coordinator.

Section 42 of *FIPPA* specifically authorizes disclosure in certain circumstances. However, as *LASA* prevails over *FIPPA* and contains more stringent provisions than *FIPPA* in respect of release of client information and information received in the course of our duties, no disclosure should be made pursuant to s.42 of *FIPPA* without ensuring that the disclosure is consistent with *LASA*.

## **7.1 What to do when inappropriate disclosure occurs**

Where you become aware that a privacy violation has occurred, you should immediately contact the *FIPPA* Coordinator for direction. LAO has developed a policy document dealing with managing a privacy incident. Staff should act in accordance with that policy in dealing with privacy violations.

## **8. Dealing with a complaint about privacy**

Area offices and provincial departments each deal with complaints individually in accordance with the complaint policy of LAO. Where you receive a complaint that deals with a privacy issue, please contact the *FIPPA* Coordinator for advice in dealing with the complaint. Even if you are confident in how the complaint should be handled, please advise the *FIPPA* Coordinator of the complaint, so that an accurate record of the number of privacy complaints can be maintained.

## **9. The right of access and correction by an individual regarding his/her personal information**

Section 47 of *FIPPA* provides an individual with a right of access to information contained in a personal information bank (such as TSN) about that individual. Generally, the policy of LAO is that a legal aid applicant has full access to the information contained in the legal aid file. Exceptions may exist in the case of information related to an investigation conducted by the investigations department, or where the information is provided by a third party who may be

affected by the release of information (for example, opinion letters of lawyers – see below). If you have any questions about the release of portions of a legal aid applicant's file, contact the *FIPPA* Coordinator.

The right of correction by an individual regarding his or her personal information allows an individual to request correction of personal information; to require that LAO place a statement of disagreement in that individual's record where a correction was requested and not made; and to require that any person to whom the record was disclosed in the preceding year be notified of the correction or statement of disagreement. These rights require that LAO have a record of persons to whom the record was disclosed. While it is not necessary to record disclosures to LAO staff who are routinely dealing with the files of legal aid applicants, **any disclosure of personal information to a person who is not an employee of LAO should be recorded in the notes and attachments section of the individual's record.** While such disclosure would be unusual, it may occur in the context of verification of financial information or other eligibility issues. It is not necessary to make a notation where you are seeking information from a third party, but you have not disclosed any personal information. However, where personal information was disclosed, a notation must be made in the client computer record. Contact the *FIPPA* Coordinator for further information if you receive a request for correction or statement of disagreement.

## **10. Retention and disposal of personal information (s. 40 of FIPPA and Regs.)**

- **Retention**

Section 5 of the regulation under *FIPPA* requires that personal information used by an institution shall be retained for at least *one year* after use. Under existing LAO policy, client files are retained in area offices for *two years plus the current calendar year*. Our own administrative needs will continue to require us to retain client files for longer than the minimum required under *FIPPA*. Area Offices should continue to use bonded mobile shredders to destroy information that has passed its retention date. The provincial office and the Toronto area office have their own shredders.

- **Disposal**

Please remember that client files or any material containing client personal information or any other personal information must be **shredded** before being disposed of. Client material should not be placed in the blue box for recycling without being shredded first. If you do not have a shredder on your premises, please contact the Purchasing Coordinator (Marylee Webb, Purchasing Administrator, to make arrangements to purchase one. This instruction refers not only to the disposal of records at the end of their use, but also refers to any disposal of paper containing personal information on a daily basis.

The Clinic Services Office retains clinic records in the provincial office for a period of two years before they are sent to secure storage.

- **Reuse of Paper**

Some areas and departments have, in the past, reused paper for scrap pads, writing on the back of printed forms or other previously used documents. Although not intentional, this may result in advertent reuse of paper with confidential client information.

In order to protect client confidentiality, please discontinue all reuse of paper within your area or department. Recycling of paper that does not contain personal information may be accomplished by appropriate use of the Blue Box program which ensures that waste does not occur.

## **11. Electronic records and e-mail**

Records include electronic records and e-mail. E-mail records will be disclosable or not in the same manner as paper or other electronic records are disclosable. Please ensure that electronic records are preserved as required, either in electronic form or by printing a copy and storing it with the relevant file. Where information is retained only in electronic form, a notation should be made to put with a related paper file so that a subsequent search of the file would reveal the existence of the electronically stored information.

In deciding whether it is necessary to retain an e-mail message or other electronic record, consider whether the record's contents contain information which you would retain if it were in paper form. Transitory records may be destroyed. Examples of transitory records include information circulars, notices to staff, information about administrative matters not relating directly to our provision of service, duplicate copies of memoranda and drafts of letters or documents which do not represent significant steps in the preparation of a final document or which do not record decisions.

On the other hand, e-mail messages which relate to our business function or client files should be retained. Care should be taken to store these messages in such a way that they cannot be altered or deleted. If you are in doubt about whether a record should be retained, it is preferable to retain it for some time in order to assess its importance at a later date. If you do not have a secure method of long-term storage, retain a paper copy of the message.

Because e-mail messages are sometimes meaningless without the context in which they were sent, it may be necessary to retain information about the sender, date and time and the subject matter of the message, particularly if the message is a reply message. Bear in mind that what may seem to you to be an informal discussion may be a record if the discussion leads to a decision relating to an LAO business function. In such cases, the electronic record should be retained.

## 12. Legal aid records subject to FIPPA

The following are records that are not subject to either solicitor-client privilege or the confidentiality provisions and, accordingly, their disclosure falls under the provisions in *FIPPA*. The list is not intended to be exhaustive. Each item is explained more fully immediately below.

1. **Manuals and guidelines** produced by LAO for staff or service providers
2. **Policy and operational notices and memoranda** sent to staff or service providers
3. **Staff records**
4. **Records about service-providers or consultants** made or retained by the Corporation
5. **Opinion letters**

### 12.1 Manuals and guidelines

*FIPPA* directs that certain documents must be made available to the public (for inspection and copying) in a library or reading room of each institution, including manuals, directives and guidelines prepared for officers as to how to determine the application by a person for a privilege or benefit administered by the institution. Although you will not have a library or reading room available to the public, **please provide any manuals or guidelines to a member of the public on request to examine** and, if requested, please allow them to use a meeting room.

### 12.2 Notices and memoranda

Notices and bulletins sent to **service-providers** are public documents **available to any requester**. Notices and memoranda sent to **staff may be disclosable** subject to certain exemptions (s.18(1)(e), (f) or (g) of *FIPPA*). Requests for disclosure of memoranda sent to staff should be discussed with the *FIPPA* Coordinator.

### 12.3 Staff records

Staff records would **generally not be disclosable (except to staff themselves)** because disclosure would constitute an unjustified invasion of personal privacy (s.21(3)) except for general information about the classification, salary range and benefits or employment responsibilities of staff members (s.21(4)(a)). Where staff themselves request disclosure of staff records, refer to the appended guidelines. Where third parties request disclosure of staff records, advise the requester that such information is not routinely provided. If they wish to pursue the request, give them a *FIPPA* request form, collect \$5 and forward the completed request form to the *FIPPA* Coordinator.

## 12.4 Records about service providers and consultants

Records about individual service-providers and consultants would **generally not be disclosable** because disclosure would constitute an unjustified invasion of personal privacy. **Information about the amount billed by a lawyer in a specific case would be protected by solicitor-client privilege and disclosure not governed by FIPPA. Information about the total amount billed by a particular lawyer would be subject to FIPPA but not disclosable because disclosure would constitute an unjustified invasion of personal privacy (s.21(3)(f)) unless it were determined that there was a compelling public interest in the disclosure, in which case the exemptions would not apply (s.23).** Where a requester wishes to pursue access, provide a *FIPPA* request form, require payment of \$5 and forward the completed request form to the *FIPPA* Coordinator.

## 12.5 Opinion letters

Where an applicant requests a copy of his or her lawyer's opinion letter, the following procedure should be followed. Counsel should be contacted and advised of the request for the opinion letter. Counsel should be told that LAO is subject to FIPPA and as such, a legal aid applicant is generally entitled to access to his or her personal information, which includes opinion letters. However, exceptions are available under FIPPA where disclosure would reasonably cause a third party to fear for his or her personal safety. Ask counsel whether counsel would fear for his or her safety if the opinion letter were released. If counsel responds that he or she does have safety concerns, counsel should also be advised that a decision on release will be made by the head's delegate under FIPPA and full or partial disclosure may be made. Where disclosure is refused, the requester is advised that the reason for refusal is that a third party would fear for his or her health or safety. Sometimes, counsel may conclude that, in these circumstances, a requester who may be angry at refusal to disclose may be more dangerous than a requester who receives the opinion letter and is unhappy with its contents. If this exchange between your office and counsel has taken place in writing, you should then forward the request for the opinion letter to the FIPPA Coordinator, together with the submissions of counsel regarding release. If the exchange is not in writing, send along the request in a memo, with notes of your conversation. Please enclose a copy of the requested opinion letter. Counsel will then be contacted again before a decision is made under FIPPA whether to release the opinion in full or in part.

## 13. Urgent circumstances

**There have been, and will continue to be, urgent circumstances in which protection of someone's life or security may depend on disclosure of personal information. FIPPA provides for the disclosure of personal information "in compelling circumstances affecting the health or safety of an individual" (s.42(h)). Should those circumstances arise, you may not have time to consult with the FIPPA Coordinator. Following such disclosure, however, please contact her.**

There have been situations in which legal aid staff feel that the police should be notified because a legal aid applicant is committing a criminal act on legal aid premises or staff fear for their own safety and wish to call the police for protection. FIPPA and the *Legal Aid Services Act* do not protect legal aid applicants from disclosure of information where the information is about a criminal act being committed on legal aid premises or witnessed by legal aid staff. Where legal aid staff fear for their own or a third party's health or safety, the section referred to above allows the police to be contacted. Consult with the FIPPA Co-ordinator prior to calling the police, if possible.

## **14. Timely responses**

*FIPPA* has deadlines that must be observed in responding to requests for access to information. For example, a decision letter providing for or denying access must be given by the provincial office within 30 days of a request for access. Within that time period, any affected third party must be given notice of the request and provided with an opportunity to make representations. Accordingly, please deal with any requests for access in a timely fashion and ensure that request forms are forwarded to the *FIPPA* Coordinator as soon as they are completed. A letter requesting access to information is a request under *FIPPA*. Requests of this nature must be dealt with in the same time frames as formal requests.

## **15. FIPPA Coordinator**

If you have any questions about privacy, contact the LAO FIPPA Coordinator at:

**mail:**

Legal Aid Ontario  
Atrium on Bay  
40 Dundas Street West, Suite 200  
Toronto, Ontario  
M5G 2H1

**Email:**

fippa@lao.on.ca

**Fax:**

(416) 979-7338

***Flowchart***

A flowchart is attached that may assist you in determining how to respond to requests for information. When in doubt, contact the *FIPPA* Coordinator.

## **16. Information available in area offices for public inspection**

### **16.1 Information available in area offices for public inspection**

- Annual Report
- Business Plan
- Guide to coverage and financial eligibility
- Area office procedures manual
- Human resources policies and procedures manual
- Financial eligibility criteria, policy and procedures manual
- Duty Counsel Manual
- Payment Agreement Policy

### **16.2 Information available in provincial office for public inspection**

- Annual Report
- Business Plan
- Guide to coverage and financial eligibility
- Area office procedures manual
- Human resources policies and procedures manual
- Financial eligibility criteria, policy and procedures manual
- Payment agreement policy
- Duty counsel manual
- Tariff manual
- Clinics policies and procedures
- Clinic letters patent, operating bylaws and policies\*

- Clinic staffing components
- General terms and conditions of funding for clinics

\*Clinic letters patent, operating bylaws and policies may not be available for all community legal clinics

### 16.3 Information that may routinely be disclosed

- **To an applicant for legal aid** (fairness also requires the following disclosure)
  - Form 2 Application for legal aid
  - Lawyer’s account relating to applicant’s case
  - Reasons for refusal of legal aid certificate
  - Information provided by the applicant that is in the applicant’s file
  - Minutes of an area committee relating to the application or legal aid appeal of the applicant
- **To an LAO employee**  
Information provided by the employee that is contained in the employee’s personnel file
- **To the court or Crown Attorney prior to the hearing, preliminary inquiry, trial or appeal\***  
The fact that an individual has applied for a certificate or that a certificate has been issued and the stage an application has reached in the legal aid administrative process for the purpose of assisting the court or tribunal and its administrative process.
- **To a lawyer agent providing services at the request of a lawyer who acknowledged a legal aid certificate or to a third party to whom a lawyer owes a disbursement\***  
Information about whether or not the lawyer who acknowledged the certificate has been paid and the amount of the relevant payment.
- **To a third party who by agreement or obligation will be paying part or all the legal aid costs incurred by a legal aid recipient\***  
The existence and amount of the legal aid debt for each outstanding certificate, including a breakdown of the amounts owed to the Corporation for fees, disbursements, interest and the administrative charge imposed by LAO and the dates when those amounts became due.
- **To a third party creditor of an individual, usually of a service-provider, to whom the Corporation will be paying out funds when the third party has taken steps to enforce their legal right to demand payment directly from the Corporation\***  
Particulars of other creditors who are also claiming against the funds to be paid out by the Corporation.



\* This disclosure was expressly authorized by the LAO board pursuant to its authority under s-s.90(2) of the *Legal Aid Services Act*.

## 16.4 Information usually disclosed\*

- **To an applicant for legal aid\*\* (fairness requires some disclosure)**
  - Information provided about the applicant that is contained in the applicant's file (unless the information was provided in confidence and there is reason to maintain the confidence)
  - Opinion letter provided by the applicant's lawyer (after the lawyer has been contacted and given an opportunity to resist the disclosure for reasons of safety or security)
  - Name(s) of decision-makers, including members of area committee, who decided the applicant's application for legal aid (unless there is reason to fear for their safety or security) and names of clinic board members (unless there is reason to fear for their safety or security)

\* Contact the *FIPPA* Coordinator when in doubt

### **The area office should:**

When an applicant requests a copy of his or her lawyer's opinion letter, **contact the lawyer** and tell the lawyer that the applicant is requesting a copy. If the lawyer expresses concern about his or her safety or security, advise the lawyer that, even if the entire letter is not disclosed, it is likely that, at the very least, a portion of it will be **disclosed out of fairness to the applicant** whose case may or may not be funded as result of the content of the opinion letter. If issues arise, contact the *FIPPA* Coordinator.

- Contact the *FIPPA* Coordinator in cases where you think that there is reason to fear that disclosure of names of members of the area committee would result in a risk to their safety or security. (Applicants will know the names of staff decision-makers because their names will appear on the decision.)

- **To an LAO employee**

Information provided about the employee that is contained in the employee's personnel file (unless disclosure would also reveal information about another person and disclosure would unjustifiably invade the privacy of that other person)
- **To the Law Society\*\*\***

Allegations of serious misconduct by a lawyer providing legal aid services relating to his or her integrity or professional misconduct; this disclosure would be made by the **Vice President – Strategic Planning and Compliance or his or her designate**. The information disclosed may include a copy of a legal aid client's complaint and copies of legal accounts submitted by the lawyer. This disclosure may occur when it appears to LAO

that a lawyer is practising under suspension **or when the lawyer's status indicates that he or she is not practising.**

**Not practising incorporates two Law Society status definitions:**

- **Not Practising Law – Employed:** A lawyer who is employed by an organization such as government, an educational institution, a company, a society, trade union, etc., and who does not provide legal services.
- **Not Practising in Ontario – Other:** A lawyer who is currently not practising law and/or providing legal services.

\*\*\*This disclosure was expressly authorized by LAO's board pursuant to its authority under s-s.90(2) of the *Legal Aid Services Act*.

## 16.5 Information this is not disclosed\* (breach of confidentiality or privacy)

- Information contained in a legal aid file that is requested by a third party
- Information as to whether or not an individual has applied for or is in receipt of legal aid assistance that is requested by a third party
- Information about a lawyer's billings that is requested by a third party
- Investigations files
- Name of a complainant or informant who provides information in confidence about a client or a service-provider

**\*The area office should:**

- On receipt of a request for any of the above information, advise the requester that the above information is not disclosed because it is subject to solicitor-client privilege or confidentiality provisions in our legislation. If the requester wishes to pursue the request, provide the requester with the *FIPPA* request form, require payment of the \$5 application fee and forward the request form to the *FIPPA* Coordinator.
- Note that fairness may require disclosure of the information contained in a complaint if reliance will be placed on the information to disentitle the client from legal aid services or to impose a sanction on the service-provider. The decision to disclose or not will be made by the head.

## **17. Request for information flowchart**

Refer to attached file: Privacy Policy\_Request for information.pdf