



145 Wellington Street West, Suite 203, Toronto, Ontario, M5J 1H8  
416.391.2362 • theCMA.ca

# **CMA Submission to the OPC Consultation on OPC Guidance Processes**

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## Introduction

The Canadian Marketing Association (CMA) appreciates the OPC's commitment to meaningful consultations on its guidance processes.

Marketing is an area where privacy compliance intersects with legitimate business interests daily. Marketing involves complex data flows – from lead generation to customer analytics – that require nuanced guidance. Clear guidance must achieve privacy protection while supporting legitimate business objectives. A legitimate business activity and key economic driver, marketing connects organizations with their customers. CMA consumer research shows that 73% of Canadians want and expect advertising and offers to be relevant, underscoring that responsible, contextual marketing aligns with reasonable consumer expectations when appropriate privacy protections are in place.

Clear, practical, and timely guidance is essential for promoting privacy protection, strengthening consumer trust, supporting innovation, and ensuring that Canadian organizations remain competitive in a rapidly evolving digital environment.

The fundamental goal of every consultation must be to ensure that resulting guidance meets PIPEDA's dual purpose: to "recognize the right of privacy of individuals with respect to their personal information and the need for organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances." Strong privacy protection and the need for Canadian organizations to use personal information responsibly are both particularly critical in the context of shifting trade alliances and Canada's continued economic growth.

To be effective, guidance must result in practices that achieve privacy protection without stifling legitimate marketing innovation.

With this in mind, we propose that the OPC establish guiding principles for all its guidance documents. The principles are outlined in the following section, after which we provide our responses to the specific consultation questions.

## Guiding principles for effective OPC guidance

The CMA recommends anchoring OPC guidance development in 10 principles, which we have grouped into three categories: foundational principles, practical application and implementation, and coordination and evolution.

### Foundational principles

- **Proportionate and risk-based:** Guidance and regulatory expectations should be practical and proportionate to the incremental privacy protection they provide to consumers. This includes taking into account varying levels of risk and operational realities while enabling organizations to comply effectively and continue delivering value to consumers and the broader economy.
- **Clear distinction:** Guidance should clearly distinguish legal requirements from non-binding best practices, providing clarity for organizations, particularly SMEs, and supporting consistent interpretation and implementation.

- **Scope:** The OPC should focus its guidance on broad issues with wide applicability across industries and stakeholders. Narrow, one-off situations or individual complaints should be addressed on a case-by-case basis rather than extrapolated into general guidance.
- **PIPEDA's dual purpose:** Guidance must reflect PIPEDA's dual purpose of protecting individuals' privacy while recognizing organizations' legitimate need to collect, use, and disclose personal information for purposes a reasonable person would consider appropriate in the circumstances.

### Practical application and implementation

- **Contextual application:** Guidance should reflect that marketing activities are highly contextual: practices that are appropriate in one context may be inappropriate in another. Guidance should reflect differences in sensitivity, identifiability, purpose, and the circumstances of collection, use, and disclosure.
- **Practical implementation and scalability:** Guidance should consider implementation costs and operational feasibility and include scalable approaches that are suitable for organizations of different sizes, sectors, and levels of technical capability.
- **Real-world examples:** Guidance should include hypothetical scenarios and anonymized real-world examples to demonstrate practical application. The OPC should engage with industry associations to help identify common use cases and operational realities.

### Coordination and evolution

- **Regulatory coordination:** Guidance should build on existing regulatory and policy frameworks to avoid unnecessary complexity, duplication, or inconsistency across different frameworks.
- **Iterative approach:** The OPC should review guidance periodically, particularly following a material shift in interpretation or approach, to ensure it is accomplishing its policy objectives and to address unanticipated operational concerns.
- **Support responsible innovation:** Guidance should avoid categorical prohibitions unless there is clear evidence of a real risk of significant harm, as overly restrictive approaches may unintentionally stifle innovation and beneficial data uses.

With these principles in mind, the CMA is pleased to provide feedback on the OPC consultation questions.

## 1. OPC engagement with businesses, groups, and individuals

### 1.1 Forms of consultation

*Consultation questions:*

- *Do these forms of consultation raise challenges for organizations that the OPC should be aware of?*
- *Are there other ways to consult that could provide greater impact, improve accessibility, or increase efficiency of the process?*
- *Do stakeholders prefer to participate in roundtable meetings where other participants represent similar groups and organizations, or do they prefer mixed-attendance meetings (with stakeholders across varied groups and interests)?*

**CMA response:**

**Consultation format and participation:** Mixed-attendance meetings can be constructive when used at the appropriate stage of the process and when a reasonable balance of perspectives is represented. The CMA recommends a sequenced approach:

- Early engagement should be limited to similar groups and organizations so they can provide initial views in a setting that supports candid, practical input.
- Mixed-attendance sessions may be most valuable later, once the OPC has heard initial perspectives and is moving toward a draft or near-final position.
- Once the guidance is close to completion, organizations responsible for implementing the guidance should be invited to preview the precise wording, to ensure it is operationally sound and does not trigger unintended consequences.

Mixed-attendance sessions that include multiple participants from each stakeholder group lead to more meaningful and productive dialogue than those where a single perspective is significantly overrepresented.

This approach promotes openness early in the process while ensuring perspectives are appropriately balanced before guidance is finalized.

**Topic-specific consultations:** For certain topics, dedicated industry-focused roundtables may be particularly beneficial, as they can provide a constructive forum for candid discussion of implementation challenges and industry-specific solutions.

**Facilitation of mixed-attendance sessions:** In mixed-attendance consultations, the OPC should establish clear expectations at the outset, including ground rules for respectful engagement and ensuring that all participants have an opportunity to contribute. An opening statement affirming the OPC's interest in hearing a diversity of viewpoints would support inclusive and constructive discussion.

**Consultations related to technology:** For guidance involving emerging technologies, consultations should include organizations that develop the technologies and those that use them. This supports a balanced understanding of risks and benefits and helps ensure guidance remains proportionate and practical.

## **1.2 Consultation timing**

*Consultation question:*

- *What considerations should we be aware of with respect to the timing of guidance consultations?*

**CMA response:**

**Deadline considerations:** SMEs, nonprofits, and organizations without dedicated policy staff may need additional time to respond to initiatives, particularly during peak times (e.g., seasonal retail peaks). Submission deadlines should account for these factors, and flexibility should be provided where appropriate to support broad and meaningful participation. Consideration should also be given to other government consultations that may be underway, which place additional demands on limited resources.

**Protocols for association submissions:** Most associations require time to consult their membership before submitting a brief or attending a roundtable, particularly for new, complex, or highly technical topics. The OPC should provide adequate time for this internal consultation process to ensure submissions capture informed industry perspectives.

**Consultation sequencing:** For guidance in new areas, or significant revisions to existing guidance, consultation *should* take place before drafting to inform policy direction, and after drafting to test clarity and avoid unintended consequences.

**Flexibility where direction shifts:** Where consultation feedback results in a material change in policy direction, additional, targeted engagement may be warranted to ensure the revised approach remains operationally workable. Follow-up should be proportionate to the scope and impact of the change.

**Early engagement:** For major initiatives, the OPC should conduct meaningful consultations with key stakeholders before draft materials are released. Early engagement ensures that operational realities, innovation impacts, and consumer expectations inform preliminary analyses, reducing the need for substantial revisions in later stages.

### **1.3 Draft OPC consultation policy**

*Consultation question:*

- *We welcome any feedback on the proposed procedures outlined in the draft Guidance Consultation Policy.*

**CMA response:**

**Proportionate, risk-based engagement:** Consultation approaches should reflect that different issues vary in their sensitivity, context, and associated levels of risk. The OPC should avoid a one-size-fits-all model and adopt processes that are proportionate to the nature and context of the guidance being developed. Where proposed guidance raises broader policy considerations, an additional layer of consultation may be warranted, consistent with the guiding principles outlined above. In addition, the OPC should highlight and showcase examples of industry best practices. This recognizes the significant efforts that most organizations make to meet or exceed compliance requirements and to communicate effectively with consumers.

**Contextual transparency:** In all consultation documents, the OPC should provide clear context on why it is contemplating new or revised guidance. This should include compliance trends—such as instances where organizations were found to be in compliance and the overall volume of complaints relative to business activity. This context helps ensure that guidance development is grounded in real, demonstrated risks rather than isolated or exceptional cases.

**Practical examples:** Guidance documents should include hypothetical scenarios and anonymized real-world examples to demonstrate how privacy principles apply in practice, recognizing that marketing activities are highly contextual.

**Implementation feasibility and transition periods:** The OPC must consider the practical implementation implications of guidance recommendations, including operational and technical changes that may be required (e.g., system updates, training). Where these implications are significant, the OPC should provide a reasonable transition period between publication and expected implementation.

**Scalability and meaningful consumer protection outcomes:** Guidance should be scalable for organizations of different sizes and resources, including SMEs and small in-house teams that may lack access to complex privacy infrastructure.

**Coordination across regulatory frameworks:** The CMA supports guidance that builds on existing regulatory and policy frameworks and avoids creating unnecessary complexity or confusion for organizations in meeting their compliance obligations. Aligning guidance with existing frameworks helps provide clear, practical expectations for organizations, reduces unnecessary compliance burden, and supports guidance that is workable across real-world business contexts.

## 1.4 Awareness of consultations

*Consultation questions:*

- *Are there other ways of spreading awareness that we should consider?*
- *How can OPC ensure that consultation Calls for Comment reach a broad and diverse range of stakeholders?*
- *Following a consultation, is it helpful for OPC to publish a separate report on the feedback we received? Or should resources be focused on revising and finalizing guidance documents along with a summary of the consultation?*

### **CMA response:**

Communications through the OPC's existing channels, such as email notifications to subscribers, social media posts, and prominent website notices, should be sufficient to reach stakeholders who follow OPC communications. The CMA would be happy to share OPC consultation announcements through its communication channels.

## 2. Presentation, contents, and utility of PIPEDA guidance

### 2.1 Format and organization

*Consultation questions:*

- *What preferences do stakeholders have for how guidance is organised and presented?*
- *Is it helpful for OPC to separate legal requirements (what organizations **must** do under the law) into separate sections from best practices (what organizations **should** do to meet legal requirements)?*

**CMA response:**

OPC guidance should remain consistent with PIPEDA's principles-based and technology-neutral framework. Guidance must:

- Clearly distinguish legal requirements from best practices.
- Avoid unnecessary prescriptiveness or requirements that extend beyond governing legislation (e.g., PIPEDA).
- Remain adaptable across different contexts and business models.

Best practices must not be defined solely as the most restrictive or privacy-maximizing approach. Rather, they should reflect PIPEDA's dual purpose by supporting meaningful privacy protection in a practical way that considers impacts on individuals and organizations and supports organizational viability, competitiveness, and innovation.

This approach aligns with privacy-by-design principles.

**2.2 Guidance topics***Consultation questions:*

- *In your experience, does OPC PIPEDA guidance generally focus on the most relevant and important privacy topics and issues for businesses?*
- *Are there additional steps or sources of information we could use to help identify areas where there is a strong interest in guidance and advice?*

**CMA response:**

**Supporting compliance success:** The OPC should allocate resources not only to identifying problematic practices but also to highlighting and showcasing successful privacy compliance approaches. This could include featuring anonymized examples of marketing campaigns, websites, or data practices that effectively achieve both consumer privacy protection and legitimate business objectives. Such positive examples would provide valuable benchmarks for organizations seeking to improve their privacy practices.

**Practical guidance for resource-constrained organizations:** Many organizations, particularly SMEs, lack access to specialized legal counsel or privacy professionals to navigate complex privacy requirements. The OPC should prioritize developing practical, scenario-based guidance that helps these organizations understand how to apply privacy principles in common marketing situations. This could include step-by-step implementation guides, decision trees, or "if-then" scenarios that make compliance more accessible to organizations without extensive professional support services.

**Industry-informed topic identification:** To help ensure guidance is developed where it is most needed, the CMA recommends an annual survey or roundtable to identify the areas where the

OPC is considering developing guidance, and to suggest additional areas. This will help address the rapid pace of technological change, rather than creating additional complexity in areas where current practices are functioning effectively. Another valuable source of information is independent industry research, such as the CMA's privacy research, to understand consumers' perspectives and needs, and their shifting expectations around technology over time.

## 2.3 Clarity and utility

*Consultation questions:*

- *Are there specific changes OPC should consider making to our guidance and associated processes?*
- *Is it helpful to include hypothetical scenarios in the guidance that outline the application of privacy considerations for a given situation or set of circumstances?*
- *Is it helpful to include examples taken from OPC investigation findings to demonstrate how privacy requirements apply?*

### **CMA response:**

***Practical examples and scenarios:*** Guidance documents should include hypothetical scenarios and anonymized real-world examples, including through ongoing dialogue with industry. Marketing activities are highly contextual. Abstract legal principles alone are insufficient; concrete examples help organizations understand practical application.

***Implementation considerations:*** Guidance should acknowledge the practical implementation costs of recommendations and include scalable approaches that work for organizations of different sizes and resource levels. Small marketing agencies and in-house teams often lack the resources for complex privacy infrastructure. Guidance should acknowledge that perfect privacy protection might not always be commercially feasible for smaller operations and should include scalable approaches.

### **Conclusion**

Clear, consistent, and proportionate guidance is essential for strong privacy protection while enabling organizations to meet consumer expectations and implement data-driven practices responsibly. We encourage the OPC to continue refining its consultation processes to support early engagement, proportionality, and practical clarity. By ensuring that guidance is grounded in real-world contexts, reflects PIPEDA's dual purpose, and is informed by diverse stakeholder perspectives, the OPC can enhance compliance outcomes and strengthen consumer trust.

The CMA remains committed to working collaboratively with the OPC to support the development of guidance that protects privacy while enabling organizations to operate responsibly and effectively. This dual-purpose framework will benefit both Canadian consumers and businesses in our evolving digital economy.



For questions or to discuss our submission, please contact:

Sara Clodman  
Chief Public Affairs and Governance Officer  
[sclodman@thecma.ca](mailto:sclodman@thecma.ca)

### **About the Canadian Marketing Association (CMA)**

The CMA is the voice of marketing in Canada, and our purpose is to champion marketing's powerful impact. We are the catalyst to help Canada's marketers thrive today, while building the marketing mindset and environment of tomorrow.

We provide opportunities for our members from coast to coast to develop professionally, to contribute to marketing thought leadership, to build strong networks, and to strengthen the regulatory climate for business success. Our Chartered Marketer (CM) designation signifies that recipients are highly qualified and up to date with best practices, as reflected in the Canadian Marketing Code of Ethics and Standards. We represent virtually all of Canada's major business sectors, and all marketing disciplines, channels, and technologies. We advocate with government stakeholders, while also providing Canadian consumers with information to help them better understand their rights and obligations.

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