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### **FEDERAL ACCESS TO INFORMATION AND PRIVACY LEGISLATION ANNOTATED**

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### **Publisher's Special Release Note 2022**

The pages in this work were reissued in June 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the June 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

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This release features an extensive revision to the s. 20 commentary in Chapter 1 (Annotated *Access to Information Act*); updates to Chapters 6 (Annotated *Privacy Act*), 9 (Annotated *Personal Information Protection and Electronic Documents Act*), and 12 (Reference Material).

## Highlights

**Privacy Legislation — Annotated *Privacy Act* — Protection of Personal Information — Disclosure of personal information — Case Law — Prior consent — Sections 8(1) and 8(2)** — There are two exceptions to the prohibition of disclosure of personal information: consent or legislative exemption. “In this case there is no evidence that the Respondent sought the consent of the person. Without that evidence it appears that the Respondent has acted as if it knows best and assumed that this person would not consent. Such ought not to be presumed.” In these circumstances, it was inappropriate to redact citing s. 8(1). [at 15, endorsed by the court at 16]: *Jemmo v. Canada (Citizenship and Immigration)*, 2021 FC 965, 2021 CarswellNat 4705. (F.C.).

**Privacy Legislation — Annotated *Personal Information Protection and Electronic Documents Act* — Application — Section 4 Application — Commentary** — Google, in the operation of its search engine service, uses and discloses personal information in the course of commercial activity within the meaning of s. 41(1)(a) when it indexes webpages and presents search results in response to searches of an individual’s name. This is because when a user enters a search query, Google’s proprietary computer algorithms cross-reference its index and identifies the content that Google considers relevant to the query. Its algorithms take into account a number of factors, including the search terms used, a user’s past searches, the user’s location, and the perceived quality of a webpage to determine which search results are, in Google’s view, most relevant to a user. [at 21, 50, 60]: *Reference re Subsection 18.3(1) of the Federal Courts Act*, 2021 FC 723, 2021 CarswellNat 2509. (F.C.).

**Privacy Legislation — Annotated *Personal Information Protection and Electronic Documents Act* — Application — Section 4 Application — Paragraph 4(2)(c) — Journalistic Purpose** — The operation of Google’s search engine service is excluded from the application of Part 1 of PIPEDA by virtue of paragraph 4(2)(c) because it “does not operate for a journalistic purpose at all.” [para 21, 90, 96]. Google displays what it considers to be relevant information linked to a searched name in the form of search results. “A search for an individual’s name may return, for instance, content from personal blogs and websites, chatrooms, social media sites, websites of businesses, governments, non-governmental organizations, as well as news organizations. The personal information that can be displayed in response to such searches is thus wide and varied, it is not limited to media content, and it can lead to a detailed portrait of an individual ... Google facilitates access to information, such as news media. I also agree that facilitating access to information is often associated with “publishing” said information.” [at 80, 81]: *Reference re Subsection 18.3(1) of the Federal Courts Act*, 2021 FC 723, 2021 CarswellNat 2509 (F.C.).

## **ProView Developments**

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