

# Privacy Code

## Preamble

Occupational therapy is a self-governing health profession in Ontario under the *Regulated Health Professions Act, 1991* (RHPA). Under the RHPA, it is the duty of the Minister of Health to ensure that health professions are regulated and coordinated in the public interest.

The College of Occupational Therapists of Ontario was established by the *Occupational Therapy Act, 1991* to regulate the profession. The College has a duty to serve and protect the public interest. The RHPA and the *Occupational Therapy Act*, combined with the Health Professions Procedural Code (being schedule 2 of the RHPA, herein “The Code”) are collectively referred to in this document as “the Legislation.”

The activities of the College are subject to several oversight mechanisms including both general and specific oversight by the Ontario Ministry of Health and specific oversight by the Health Professions Appeal and Review Board (HPARB), the Health Professions Regulatory Advisory Council, the Fairness Commissioner of Ontario and the Courts.

While fulfilling its mandate, the College may collect, use and disclose personal information regarding applicants for registration, registrants, registrants’ clients and persons employed, retained, elected or appointed for the purpose of the administration of the Legislation. The personal information being collected is critical to the College’s ability to effectively regulate the profession in the public interest.

Individuals who are employed, retained or appointed by the College as well as every member of College Board or a College committee are required by section 36(1) of the RHPA to maintain confidentiality with respect to all information that comes to their knowledge. Individuals who breach this provision face fines of up to \$25,000 for a first- time offence and up to \$50,000 for a second or subsequent offence; breach of this provision by corporations can face fines of up to \$50,000 on the first offence and up to \$200,000 on a subsequent offence<sup>1</sup>. In addition, personal information handled by the College is subject to the provisions of this Privacy Code.

The College’s collection use and disclosure of personal information while carrying out its regulatory activities are done for the purpose of regulating the profession in the public interest. These regulatory activities are not of a commercial character. Accordingly, the performance of the College of its statutory duties is not covered by the federal legislation titled the “*Personal Information Protection and Electronic Documents Act*” (PIPEDA). The College has adopted this Privacy Code voluntarily to provide a mechanism through which the College can provide appropriate privacy rights to individuals involved in the College’s activities, while still enabling the College to meet its statutory mandate under the RHPA, the Health Professions Procedural Code and the *Occupational Therapy Act*.

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<sup>1</sup> See the *Regulated Health Professions Act (RHPA) 1991*, Section 36(1)

## Principle 1 – Accountability

The Registrar<sup>2</sup> is accountable for compliance with these policies and procedures. Concerns or questions regarding the way personal information is being handled by the College should be directed to the Privacy Officer who can be reached at: [info@coto.org](mailto:info@coto.org)

The College's orientation and training of all new employees and appointees as well as all members of the Board, committees or working groups and staff includes instructions on safe information transmission, retention and destruction. Refresher training is also provided.

The College's Privacy Code is also available on request by phone at 416-214-1177, 1-800-890-6570, email at [info@coto.org](mailto:info@coto.org), or by mail to 20 Bay St. Suite 900, Toronto, ON M5J 2N8.

## Principle 2 – Identifying Purposes

The purpose for which the College collects, uses and discloses personal information is to administer and enforce the Legislation.

### Information about Registrants

The College collects and uses personal information regarding its registrants for the following purposes:

- to assess whether a registrant continues to meet the standards of qualification for a certificate of registration;
- to investigate complaints regarding the conduct or actions of a registrant of the College;
- to investigate reports filed about the conduct or actions of a registrant of the College;
- to investigate whether a registrant has committed an act of professional misconduct or is incompetent;
- to inquire into whether a registrant is incapacitated;
- to negotiate and implement resolutions, including undertakings and specified continuing education and remediation programs that provide for reviewing samples of client records;
- to hold a hearing of allegations of a registrant's professional misconduct or incompetence or of allegations that a registrant is incapacitated;

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<sup>2</sup> In this document a reference to the "Registrar" includes a person designated by the Registrar to perform functions under the Privacy Code.

- to carry out the quality assurance program of the College, including an assessment of the records and practice of its registrants;
- to provide practice advice or information about the expectations of registrants;
- to administer the program established by the College to provide funding for therapy and counselling and other related expenses for persons who, while clients, were sexually abused by registrants of the College;
- to investigate reports filed about members of the College under the RHPA Procedural Code;
- to assess whether a former registrant's certificate of registration should be reinstated;
- to provide statistical information for human resource planning and demographic and research studies for regulatory purposes including providing that information to the Ministry of Health and other appropriate agencies;
- to provide information about registrants to the public for regulatory purposes such as public register information and information about discipline hearings; and,
- to administer or enforce the Legislation.

The College may collect personal information regarding a registrant from the registrant, employers, colleagues of the registrant and clients of the registrant and other persons, for the purposes set out above. Personal information regarding registrants is collected by the College from time to time and at regular intervals.

The College discloses personal information regarding its registrants only as permitted by section 36 of the RHPA, in accordance with subsection 23(2) of the RHPA Procedural Code, Part 17 of the College bylaws, or as required by law. For example, the College is required under the Code to make the information available on its website and to provide access to designated information to a person who requests it.

The College, in accordance with section 36.1 of the RHPA or required by law, submit reports to the provincial government of Ontario and its ministries, such as Ontario Health and the Health Professions Database, that may include personal information about registrants.

### **Information about Employers, Colleagues and Clients**

The College collects and uses personal information regarding the employers, colleagues and clients of registrants of the College for the following purposes:

- to investigate complaints regarding the conduct or actions of a registrant of the College;
- to investigate whether a registrant has committed an act of professional misconduct or is incompetent;

- to inquire into whether a registrant is incapacitated;
- to hold a hearing of allegations of a registrant's professional misconduct or incompetence or of allegations that a registrant is incapacitated;
- to negotiate and implement resolutions, including undertakings or specified continuing education and remediation programs that provide for reviewing samples of client records;
- to carry out the quality assurance program of the College, including an assessment of the records and practice of its registrants;
- to administer the program established by the College to provide funding for therapy and counselling for persons who, while clients, were sexually abused by registrants of the College;
- to investigate reports filed about registrants of the College under the Code;
- to assess whether a registrant continues to meet the standards of qualification for a certificate of registration;
- to assess whether a former registrant's certificate of registration should be reinstated;
- to provide information about registrants to the public for regulatory purposes such as public register information and information about discipline hearings;
- to administer or enforce the Legislation.

The College may collect personal information regarding an employer, colleague and a client of a registrant of the College from the employer, colleague, client of the registrant, and other persons, for the purposes set out above.

The College discloses personal information regarding the employers, colleagues, clients of registrants of the College only as permitted by section 36 of the RHPA or as required by law. For example, hearings of the Discipline Committee are required, subject to certain exceptions, to be open to the public. Evidence at a hearing of the Discipline Committee may include personal information regarding the registrant who is the subject of the allegation of professional misconduct or incompetence, as well as personal information regarding the registrant's clients related to the allegations of professional misconduct or incompetence. Another example of disclosure of personal information about clients of registrants relates to complaints regarding the conduct or actions of registrants. Where a complainant, who is a client of a registrant, or a registrant does not agree with the decision of the Inquiries, Complaints and Reports Committee, subject to certain exceptions, either person can request a review by HPARB. The Code requires that the College disclose to HPARB a record of the investigation and the documents and things upon which the decision was based. This disclosure may include personal information about a client of a registrant.

## Information about Applicants for Registration and Potential Registrants

The College collects and uses personal information regarding applicants and potential registrants and the clients of applicants and potential registrants to assess whether an applicant or potential registrant meets, and continues to meet, the standards of qualification to be issued a certificate of registration and to administer or enforce the Legislation. The College discloses personal information regarding applicants and potential registrants and their clients only as permitted by Section 36 of the RHPA or as required by law. For example, the Code provides a procedure for an applicant who does not agree with a decision of the Registration Committee to request a review or a hearing by HPRAB. The Code requires that the College disclose to HPRAB a copy of the order and reasons of the Registration Committee and the documents and things upon which the decision was based. This disclosure of personal information to HPRAB is required under the Code.

## Information related to Unauthorized Practice and Holding Out

The College collects and uses personal information regarding individuals who may be practising the profession of occupational therapy, using protected titles or holding themselves out as practising the profession and their clients to investigate whether the individual has contravened or is contravening the Legislation and to administer or enforce the Legislation. The College discloses personal information regarding such individuals only as permitted by section 36 of the RHPA or as required by law.

## Information related to Administering the Legislation

The College collects and uses personal information regarding individuals who are retained, elected or appointed for the purposes of the administration of the *Occupational Therapy Act* including the following:

- to review prospective candidates and retain or appoint persons for the purpose of the administration of Act;
- to maintain records to ensure accurate remuneration and payment of expenses, and all documentation required by law and by the various levels of government in accordance with sound accounting practices;
- to communicate with the person (e.g., home contact information);
- to maintain accurate and fair accounts of any disputes, possible conflicts of interest or misconduct involving a person retained or appointed for the purpose of the administration of the Occupational Therapy Act or a member of the Board or committee of the College;
- for purpose of making payments and providing benefits.

The College discloses personal information regarding the individuals referred to above only as permitted by section 36 of the RHPA or as required by law.

## Information about Members of the Public

As noted above, the College sometimes collects personal information about members of the public, such as clients or witnesses. The College sometimes also collects information about members of the public who participate in College processes. For example, persons who participate in College consultation activities, such as making submissions on proposed regulations, bylaws or policies, may be identified at least internally. Similarly, persons who attend Board meetings or discipline hearings that are held in public may have information collected for administrative or security purposes and may be visible or audible to others in attendance including through video or audio conferencing. If a person requests access to personal information about themselves (see Principle 9 – Individual Access), the College will require proof of their identity before releasing the information.

## Specifying the Identified Purpose

Where practicable, the College will make a reasonable effort to specify the identified purposes to the individual from whom the personal information is collected, either at the time of collection or after collection but before use, except where to do so would defeat the purpose of the Legislation or be inconsistent with the Legislation.

The College will state the identified purposes in such a manner that an individual can reasonably understand how the information will be used or disclosed.

Where personal information is collected for one purpose, the College has the right to use and disclose the information for another regulatory purpose where it is in the public interest to do so. For example, when the College is investigating a complaint it may review the other files at the College about that registrant to the extent that they have information relevant to the current complaint. There are some exceptions. For example, most personal information collected for quality assurance purposes will not be used for disciplinary purposes.

## Principle 3 – Consent

The College collects personal information for purposes related to its regulatory goals including for the purpose of the proper administration and enforcement of the Legislation and for other related regulatory purposes.

Where practicable, the College will make a reasonable effort to specify the identified purposes to the individual from whom the personal information is collected as described in Principle 2. Obtaining consent of the individuals would, in many cases, defeat the purposes of the College's collecting, using and disclosing the personal information.

Personal information will only be collected, used and disclosed without the knowledge and consent of the individual for the purpose of the administration or enforcement of the Legislation and in accordance with any applicable provisions of the Legislation. For example, personal information about a client may be collected and used without the client's consent for the purpose of the College's quality assurance program regarding the assessment of a registrant's practice in accordance with the Code and any regulations made thereunder. Another example is that personal information about a client may be collected and used without the client's consent for the purpose of an investigation of a registrant in accordance with the Code and any regulations made thereunder.

## Principle 4 – Limiting Collection

The College collects only the personal information that is required for the purposes identified in Principle 2 of this Privacy Code. The College collects personal information using procedures that are fair and lawful.

Personal information regarding clients must be collected as part of the College’s regulatory function. This information is typically obtained by the College as part of an investigation or quality assurance program. The focus of these inquiries is the conduct, competence or capacity of the registrant and the protection of the public. The College only collects personal information regarding clients to satisfy this regulatory purpose.

## Principle 5 – Limiting Use, Disclosure or Retention

The College uses personal information only for the purposes identified in Principle 2 and in accordance with the provisions of the Legislation. Personal information is only disclosed in accordance with the provisions of section 36 of the RHPA or as required by law.

The Code and College bylaws clearly designate regarding the information regarding registrants that is publicly available. They can be accessed from the College website at [www.coto.org](http://www.coto.org) or by contacting the College at 416-214-1177 or 1-800-890-6570.

Under the Code, discipline hearings conducted by the Discipline Committee are usually open to the public. Evidence at a discipline hearing may include personal information regarding the registrant and the registrant’s clients, employers and colleagues related to allegations of professional misconduct or incompetence. Where feasible, the College may anonymize the information before it is used in a proceeding, particularly one that is open to the public. Under the Code, the panel of the Discipline Committee has discretion to close a hearing under certain prescribed circumstances and/or restrict the publication of personal information where appropriate. Reviews of decisions of the ICRC and Registration Committee by HPARB are open to the public. Similarly, HPARB has the discretion to restrict the disclosure of personal information in its review process. The objective of these regulatory processes is always the protection of the public in a transparent way. As noted above, participants in a public Board meeting or hearing at the College may be seen and heard by others including through audio and video platforms (e.g., Zoom).

The College has a record retention policy in place and conducts audits to ensure that personal information that is no longer required to be kept is destroyed, erased or made anonymous. The record retention policy can be obtained by contacting the College.

## Principle 6 – Accuracy

It is in the best interest of the public that the College collects, uses and discloses only accurate personal information in regulating the profession. The College therefore uses its best efforts to ensure that the information it collects, uses and discloses is accurate. However, in order to be accountable for its collection, use and disclosure of information, the College may make corrections to information without obliterating the original entry.

Registrants are required to advise the College within thirty (30) days of any change to their personal information. This information is also updated annually when registrants renew their registration with the College.

## Principle 7 – Safeguards

The College ensures that personal information it holds is secure.

The College ensures that personal information is stored in electronic and physical files that are secure. Security measures are in place to safeguard this information which include restricting access to personal information to authorized personnel, ensuring that physical files are under lock and key and ensuring that electronic files are password protected. The College reviews its security measures periodically to ensure that all personal information is secure.

Employees of the College receive orientation and ongoing training regarding the information safeguards required for personal information and their importance.

The College ensures that personal information that is no longer required to be retained is disposed of in a confidential and secure fashion (i.e. shredding and deleting of electronic records).

From time to time, the College uses external service providers. These service providers may store data outside of Canada. The College reviews the security measures used by these service providers to ensure that appropriate safeguards are in place.

## Principle 8 - Openness

The College's confidential policies for employees, board and committees are available to the public and its registrants via the College's website at: [coto.org](http://coto.org) or can be requested by email at [info@coto.org](mailto:info@coto.org), or by mail to 20 Bay St. Suite 900, Toronto, ON M5J 2N8.

Inquiries concerning the College's policies and practices for collecting, using and disclosing personal information may be directed to the Registrar at: [info@coto.org](mailto:info@coto.org).

## Principle 9 - Information Access

### Access

Where the College holds personal information about an individual, upon written request, the College shall allow access to the information to that individual, unless providing access could reasonably be expected to interfere with the administration or enforcement of the Legislation or it is impracticable or impossible for the College to retrieve the information.

Examples of situations where access may be denied include:

- Information contains references to another individual(s) that cannot be severed;

- Disclosure may result in significant risk of harm to the requestor or a third party;
- Information was collected or created during an investigation, inquiry, assessment or similar procedure;
- Disclosure may defeat the purposes for which the information was collected;
- Information cannot be disclosed for legal, security or commercial proprietary reasons;
- Information is subject to solicitor-client or other privilege;
- Information was generated during a dispute or resolution process;
- The request is frivolous, vexatious, made in bad faith or otherwise an abuse of process.

In cases where personal information forms part of a record created by another organization, the College may refer the individual to the organization that created the record (unless it is inappropriate to do so) so that the individual may obtain access to the personal information from the organization rather than the College.

Subject to the same exceptions as described above, the College will also provide a list of organizations to which the College has provided personal information when requested by the individual to do so.

While the College's response will typically be provided at no cost or minimal cost to the individual, depending on the nature of the request and the amount of information involved, timelines may be exceeded, and the College reserves the right to impose a cost recovery fee. In these circumstances, the College will inform the individual of the approximate cost to provide the response and proceed upon payment by the individual of the cost.

The College will make reasonable efforts to respond to the request within thirty days and to assist the individual in understanding the information.

Individuals should send their written request for access, with contact information and sufficient information about themselves to identify them to the Privacy Officer, who can be reached at 20 Bay Street, Suite 900, Toronto, Ontario, M5J 2N8, by phone 416-214-1177 or 1-800-890-6570, or by email [info@coto.org](mailto:info@coto.org).

In the event the College refuses to provide access to all of the personal information it holds, then the College will provide reasons for denying access. The individual may then choose to file a complaint with the Registrar at [info@coto.org](mailto:info@coto.org).

### **Challenging accuracy and completeness of personal information**

An individual has the right to request a correction of what in their view, is erroneous information. Where the information forms part of a record created by another organization, then the College may refer the individual to the organization that created the record (unless it is inappropriate to do so) so that the individual may question the accuracy or completeness of the information.

Where an individual can successfully demonstrate that the personal information of a factual nature (not, for example, the expression of an opinion) is inaccurate or incomplete, the College will amend the information (i.e., correct, or add information). In addition, where appropriate, the College will notify any third parties to whom the College has disclosed the erroneous information.

Where there is a dispute between the individual and the College as to the accuracy or completeness of the information, then the College will document the details of the disagreement, and, where appropriate, will advise any third party who received the contested information from the College, of the unresolved disagreement.

## **Principle 10 - Challenging compliance**

Complaints or questions regarding the College's compliance with this Privacy Code should be directed to the Privacy Officer who can be reached at 20 Bay Street, Suite 900, Toronto, Ontario, M5J 2N8, by phone 416-214-1177 or 1-800-890-6570, or by email [info@coto.org](mailto:info@coto.org).

If the Privacy Officer cannot satisfactorily resolve a complaint, the College has a formal privacy complaints procedure which includes:

- Acknowledging the complaint;
- Review the complaint by the College's Privacy Officer;
- Providing a written decision and reasons to the complainant and,
- Taking appropriate measures where the complaint is found to be justified.

Please note that there is a different process for handling complaints about the conduct or actions of a registrant of the College. Please contact the Registrar at [info@coto.org](mailto:info@coto.org) if you wish to file a complaint about the conduct or actions of a registrant of the College.