

Last updated August 31, 2020

Privacy issues should not hold back a publicly accessible registry of beneficial owners in Canada

In October 2019, Publish What You Pay Canada, Transparency International Canada and Canadians for Tax Fairness (the Coalition) published a report titled, *A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis*. The purpose of this report is to provide an analysis of privacy considerations and to outline potential risks concerning a publicly accessible company registry of beneficial owners. The Coalition hired independent legal expert Mora Johnson to author this report.

Findings from the report suggest that **public beneficial ownership disclosure, “should justify any risk of infringement of individual privacy rights”¹**.

To support this, it is recommended that:

1. Fields are limited to those that carry a lower expectation of privacy --
 - a. **Public fields that could be allowable: unique identifiers, full legal name, year and month of birth, service or correspondence address, country of usual residence, nature and extent of beneficial interest held, politically exposed person status and/or Head of International Organization Standard.²**
2. Fields above are essential to addressing government objectives of crime detection, and have further benefits for tax enforcement, consumer protection, and transparency in political financing.
3. Legislation is needed to authorize collection and disclosure of beneficial ownership information. Federal, provincial, and territorial statutes should be passed specifically authorizing collection and public disclosure of beneficial ownership information.

Aligned with this analysis, at Transparency International Canada’s Day of Dialogue 2019, Ontario Privacy and Access to Information Commissioner, Brian Beamish, expressed his view that he did not expect a public beneficial ownership registry to create privacy concerns.

More notably, our report highlights the following insights:

- **There are many legitimate and important purposes that a public beneficial ownership registry would serve beyond criminal law detection.** These include maximum deterrence of the proceeds of crime from entering the Canadian economy; tax enforcement; transparency related to government procurement; consumer protection; transparency in political financing;

¹ Refer to *A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis* pg. 5

² See Annex section at the end of this document for a summary of information disclosure fields that could be collected in a beneficial ownership registry (Table 1) and corresponding privacy implications (Table 2).

anti-money laundering and anti-fraud due diligence by financial entities, Designated Non-Financial Businesses and Professions (DNFBPs), and law professionals; transparency of small-medium enterprises; public interest investigations by journalists and investigative NGOs; transparency across provincial and international borders.³

- **Similar to most efforts to collect personal information by a government institution, specific legislation would need to be passed to expressly authorize collection and disclosure of beneficial ownership information to the public.** ⁴
- **Legislation already exists to guide handling personal information that would be used to verify beneficial ownership information that is provided.** There are already federal, provincial and territorial laws in place that would guide the management (including storage and destruction) of personal information used to validate a beneficial owner's identity.⁵
- **In some cases, there are legitimate concerns to publicly disclose beneficial ownership information. To address this, one option would be, on a case-by-case basis, to allow businesses and/or individuals to apply for an exemption from releasing beneficial ownership information into the public realm.** Applicants would be required to provide evidence to support a business confidentiality application. For example, in the UK, individuals may apply to restrict access to disclosure of their private information on the public registry. To date, 30 individuals have been successful in their application for restricted disclosure in the UK.⁶

We believe this analysis demonstrates that privacy issues related to a publicly accessible registry of beneficial owners are minimal, and we hope this study provides critical information for discussions on the implementation of a publicly accessible registry of beneficial owners in Canada.

Sasha Caldera--Campaign Manager, Beneficial Ownership Transparency, Publish What You Pay Canada

Emily Nickerson—Director, Publish What You Pay Canada

Toby Sanger—Executive Director, Canadians For Tax Fairness

James Cohen—Executive Director, Transparency International Canada

--

Annex:

³ Ibid. page 11-12

⁴ Ibid. page 13

⁵ Ibid. page 27

⁶ Ibid. page 30

Table 1: Summary of information that would be collected by the government to identify beneficial owners of corporations

Types of Information that would be collected by federal, provincial, and territorial governments (not necessarily publicly disclosed)	Types of Information that other jurisdictions have made public in a beneficial ownership registry (Public)	Rationale for collection and/or disclosure
Unique identifier (generated by the database itself)	Unique identifier (generated by the database itself)	Avoids confusion between registered persons of the same name
Full Legal Name	Full Legal Name	Needed for identification
All other names commonly known by	All other names commonly known by	Needed to identify persons who do not use their exact legal name
Full Date of Birth	Year and Month of Birth	Improves positive identification
Usual residential address	Not normally made public	Improves positive identification; provides useful information for law enforcement and other authorities
Service or correspondence address	Service or correspondence address	Allows for correspondence if business is not main address
Country of principal tax residency	Not normally made public	Important for financial institutions and allows CRA and other tax agencies to identify taxpayer information
Country of usual residence	Country of usual residence	Improves positive identification
Citizenship(s)	Citizenship(s)	Helps establish identity; Law enforcement requires this information for international cooperation
Nature and extent of beneficial interest held	Nature and extent of beneficial interest held	Clarifies whether the person owns or controls a company and to what extent
Day on which the individual became or ceased to be a beneficial owner	Day on which the individual became or ceased to be a beneficial owner	Establishes a timeframe for the purchase or sale of shares, etc.
Politically exposed person status and/or Head of International Organization Standard	Politically exposed person status and/or Head of International Organization Standard	This is especially useful for reporting entities as it helps meet their obligations under the Proceeds of Crime, Money Laundering and Terrorism Financing Act

Given conversations around beneficial ownership disclosure are occurring in Canada, our Coalition proposes an additional recommendation (separate from the report itself) that usual residential addresses should be collected and may be publicly disclosed. To protect privacy, we propose that a natural person be able to indicate an address for service instead of a residential address. This is consistent with the public disclosure of beneficial ownership information proposed by the Government of Quebec.⁷

⁷ http://www.budget.finances.gouv.qc.ca/budget/2020-2021/en/documents/Budget2021_AdditionalInfo.pdf pg.B.37 “A natural person will be able to ask the REQ to indicate an address for service or a mailing address instead of a residential address.”

Table 2: Privacy considerations for proposed public disclosure of particular beneficial owner information

Beneficial owner information of corporations that could be made public	Privacy consideration and vulnerabilities of specific fields of information
Unique identifier (generated by the database itself)	Low expectation of privacy, not inherently sensitive.
Full Legal Name	Lower expectation of privacy, and the type of information already found publicly available on the SEDI.
Year and Month of Birth	If these can be shown to be necessary to establish and affirm a beneficial owner's identity, would likely be found to be rationally connected to the purpose of having a beneficial ownership database.
Service or correspondence address	Not sensitive information, and probably available in existing public business databases as registered corporate address.
Country of principal tax residency	Higher expectation of privacy protection under the Charter (personal tax-related information as well as possible grounds for discrimination).
Country of usual residence	Lower expectation of privacy, and type of information already found publicly available on the SEDI.
Citizenship(s)	Higher expectation of privacy protection under the Charter (personal information, as well as possible grounds for discrimination).
Nature and extent of beneficial interest held	Possibly a slightly higher expectation of privacy, but the type of information already found publicly available on the SEDI.
Politically exposed person status and/or Head of International Organization Standard	No reasonable expectation of privacy in information that a person has a prominent position, such as a Cabinet Minister, a judge or the head of an international organization.