



Commission d'accès à l'information

Recruitment of personnel and protection of privacy

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Recruitment of personnel and protection of privacy

Ensuring the protection of candidates' personal information

At every step of the recruitment process, the employer must collect only the personal information necessary to evaluate candidacies and select the right person. According to this necessity criterion, even if a candidate consents to provide information that is not necessary, the employer is not authorized to collect it. Before collecting any personal information during the hiring process, the first question to ask is:

- Is it necessary, at this step, to collect this information to evaluate a candidacy for this position?

Consent, usefulness, or the potential to save time or money cannot override the requirement that the information be necessary for the purpose pursued in the recruitment process.

Learn more about the necessity criterion for:

- [Enterprises](#)
- [Government departments and public bodies](#)

Service providers and other third parties

An employer's obligations regarding the protection of personal information apply equally when acting directly or when dealing with a third party, such as a placement agency. The employer remains legally responsible for the personal information that is processed. As such, the employer must ensure that any third parties involved comply with their obligations and should give preference to those who adopt best practices.

What personal information can be collected and when?

The personal information an employer may collect depends on the purpose pursued at a given step of the hiring process. The Commission provides guidance on four key steps in this process.

Step 1: Receiving candidacies

To find the right person, the employer first builds a pool of candidacies. In the job posting they publish, the employer must ensure that they request only the personal information necessary to evaluate candidates' eligibility. For example, they can collect the **first and last name** of each candidate, as well as their **telephone number**, **email address**, and **physical address** in order to communicate with them. The employer can also collect information about the candidate's **academic** and **professional background**, **competencies**, and **interests**. Ordinarily, a résumé (sometimes accompanied by a cover letter) already contains this information, which allows for the evaluation of the eligibility and interest of the candidacy.

If the employer uses a **job application form**, they must comply with the principle of necessity for all personal information requested. They must therefore consider the specific characteristics of the position being offered. Some positions may require the collection of more specific personal information. This is the case for positions involving high levels of responsibility, positions subject to particular regulations or to a professional order, and positions requiring particular physical abilities.

If the employer must use a form that collects such specific personal information, they must refrain from using it for all positions within the organization, just as they would not ask the same interview questions for every position. The questions must also be formulated to obtain only the personal information that is necessary and nothing more. Finally, at this step of the process, it is too early to collect the candidate's references. That step must take place after interviews.

Step 2: Evaluating the strongest candidacies

To move forward with the hiring process, the employer will want to select the best candidacy from among those received. To do so, they must evaluate the ability of the most suitable candidates to hold the position and to integrate harmoniously into the organization.

Job interview

The job interview is the most common way to evaluate candidates. At this time, to confirm the candidate's identity, the employer may ask to see a piece of identification, with or without a picture, such as a driver's license, a health insurance card, or a passport. However, the employer may not retain the information contained on that [piece of identification](#). They may not, therefore, photocopy it, take a picture of it, or record its unique identifiers in the candidate's file.

Recruiting without discriminating

According to the [Charter of human rights and freedoms](#), the employer must not ask questions about certain **personal characteristics** of the candidate, such as age, gender, religion, ethnic origin, civil status, pregnancy plans, sexual orientation, etc. [Exceptions](#)

[exist](#) if the question relates to a requirement for the position to be filled (for example, being of legal age to serve alcohol), or if the employer is a non-profit organization with a specific mission (for instance, a women's shelter). The employer may also administer a self-identification questionnaire to the candidate as part of an [employment equity program](#). The candidate is then free to respond or not. For more information, consult the guide [Recruter sans discriminer](#) of the *Commission des droits de la personne et des droits de la jeunesse* (available in French only).

Psychometric tests

Some tests allow recruiters to evaluate a candidate's personality and know-how. However, caution must be exercised with **psychological and psychometric tests**. First, only aptitudes that are directly related to the position being offered may be evaluated. Additionally, the employer should ensure the scientific validity of the procedure and define objective criteria. They should also inform the candidate in advance that such a test will be administered. Moreover, the employer should show restraint when analyzing the results of psychometric tests, as these are sometimes based on algorithms that lack transparency. Finally, even if these tests are often developed by an external provider, the employer remains responsible for protecting candidates' personal information.

In short, psychometric tests raise issues in regard to the protection of candidates' privacy. They should not replace objective, position-related questions during the interview. **The Commission considers that the use of psychometric testing should be reserved for specific situations.**

Artificial intelligence

The use of **artificial intelligence** (AI) during a hiring process, for example, to sort received candidacies or to evaluate the strongest candidates, should be disclosed to candidates from the outset of the process. The employer must pay particular attention to the criterion of necessity, to transparency, and to the discriminatory biases in algorithms. They must also ensure that their organization has reached the technological maturity required to use AI: any personnel using such tools should be properly trained and have a good understanding of the tools' limitations.

If the AI system can make a **decision based exclusively on the automated processing of personal information** (that is, without human intervention; for example, the automatic rejection of certain candidacies by screening software), the employer must inform the candidates, at the latest when notifying them of the decision. The employer must also [provide additional information to the candidates and offer them the right to request a review of the decision](#). Before using an AI system, the employer must conduct a privacy impact assessment (PIA).

In a hiring context, certain uses of AI should be avoided. For example, systems that recognize emotional or psychological states during a videoconference interview are very unlikely to be proportionate to the employer's needs. **In the vast majority of cases, the**

Commission considers that such systems constitute an inappropriate use of AI, as they do not respect the right to privacy.

Learn more about **conducting a privacy impact assessment** for:

- [Enterprises](#)
- [Government departments and public bodies](#)

Step 3: Confirming the competencies and abilities of the selected candidate

Once the interviews have concluded, the employer may wish to confirm the competencies and know-how of the candidate they wish to hire. Before requesting references or consulting external records, the employer should present the candidate with a **conditional job offer**. In addition, they must obtain the candidate's **consent to verifications**, for example, through a signed form. The employer must specify the reason why the checks are necessary in light of the position being offered, as well as the third parties with whom the checks will be conducted.

Learn more about obtaining **consent from persons concerned** for:

- [Enterprises](#)
- [Government departments and public bodies](#)

Furthermore, when consulting an external record, the employer must review only the personal information necessary to evaluate the essential requirements of the position. Only that information may be included in the candidate's file. The candidate's date of birth may be necessary to consult an external record. Outside of that context, however, it should not be collected before the official hiring. As for the **Social Insurance Number, it is not necessary** at the stage of confirming the competencies and abilities of the selected candidate.

The following precautions apply to any other type of **file** or **score concerning a person's solvency, reputation, or character** (for instance, algorithmic security screening for reliability status, pre-employment check, digital reputation analysis, etc.).

References

The employer may ask the candidate to provide the **names** and **contact information of previous employers** as references. The employer must obtain the candidate's consent before contacting them. The candidate may also demonstrate their employability by providing a letter of recommendation, for example, from a former employer.

Social media

Even though **social media** content is often open and accessible, reviewing a candidate's online profiles generally constitutes an unjustified intrusion into their privacy, given the purpose of the hiring process. In addition to potentially revealing personal characteristics that the employer is not permitted to collect, these profiles contain a wide range of information unrelated to a person's professional competencies. This information may also be inaccurate or no longer up to date. Even if a candidate voluntarily invites the employer to view their social media profiles in their résumé, the necessity of the collection remains the essential criterion to be respected.

The Commission recommends that employers refrain from reviewing candidates' social media profiles unless the particular context of the position justifies it (for example, for political staff, or a spokesperson role). In such cases, they should give preference to strictly professional networks. They must also ensure they obtain the candidate's prior consent, since the collection is then carried out from a third party (the platform).

Credit report

When reviewing a **credit report** or any other file or score relating to a person's solvency, reputation, or character, the employer must exercise caution regarding the conclusions that may be drawn. For example, a person may have experienced significant financial difficulties for personal reasons that do not call into question their professional competencies. The employer must ensure that they obtain the candidate's consent before proceeding.

To verify a candidate's honesty and character, the Commission recommends using a less intrusive method, such as reference checks.

Medical information

If necessary, the collection of **medical information** may be carried out through a questionnaire, by obtaining medical records (with the candidate's consent), or by administering tests. However, such collection must not be systematic, intrusive, or overly broad. A questionnaire must not contain unjustified questions about the candidate's private life, such as the name of their physician, any specialists they have consulted, or any other questions about injuries, illnesses, or accidents that are unrelated to the abilities required for employment.

Similarly, questions about a candidate's functional limitations must be directly related to the abilities or qualities required to hold the position in question. Pre-employment medical questionnaires must never be treated as comprehensive health assessments. An employer may also not carry out insurability checks related to the group insurance plan in place in order to reject candidates based on their state of health, the cost of their medications, or medical needs not covered by insurance. Such an intrusive practice would be unjustified and even discriminatory.

Medical information is sensitive and highly confidential. **As such, the Commission reminds organizations that only employees who require this specific information in the performance of their duties may access it.** It also recommends that such information be stored in separate files.

Criminal background

Criminal background checks must be directly related to a specific requirement of the position to be filled, and only the necessary information may be collected.

This verification, which is sometimes required by law, may be conducted through a police service. In such cases, the employer must also obtain the candidate's prior consent.

Court records (also referred to as "plumitifs") are another way to verify criminal backgrounds. Although the information they contain is public in nature, **the Commission reminds employers that they must be able to demonstrate the legitimacy of their need.**

Moreover, the employer may not include criminal background in the candidate's file if the offence is unrelated to the position or if the candidate has obtained a record suspension (pardon).

Step 4: Hiring the selected candidate

To formalize the employment contract with the selected candidate and enable human resources management, the employer may collect certain additional personal information.

The employer may specifically require:

- The new employee's **residential address**;
- The **name of an emergency contact**, along with their telephone number and relationship to the new employee;
- Their **date of birth**;
- Their **Social Insurance Number (SIN)**;
- The new employee's **banking information** for the payment of salary;
- A photograph of the new employee (in certain cases).

For the **date of birth**, an employer may have a serious and legitimate reason to know the new employee's age, such as to determine the terms of enrollment in a pension plan or an employee benefits plan.

An employee's **Social Insurance Number** is personal information that must be collected by the employer under tax laws. It is not necessary during the earlier stages of the hiring process.

In certain cases, a **photo of the employee** may be collected for identification or security purposes. However, an employer that wishes to use biometrics to verify or confirm the identity of their personnel [must comply with certain obligations](#).

Personnel placement agencies

In addition to the requirements that apply to all employers, personnel placement agencies must be transparent with candidates. Agencies must:

- Identify themselves to candidates and explain how their personal information will be used;
- Obtain the candidates' consent if they wish to retain their personal information for a secondary use;
- Inform candidates of the identity of the employer as soon as possible or, if the employer does not wish to be identified at the beginning of the process, send anonymized candidacies to the employer. This way, only preselected candidates will have their personal information disclosed to the employer.

How and until when should candidates' information be retained?

Employers and the third parties they do business with are responsible for ensuring the secure management of personal information, from its collection to its destruction. They must adopt reasonable measures to protect and safeguard personal information.

The protection of personal information must also apply to the transfer and communication of personal information. Such information needs to be accessible only to persons who require it to perform their duties.

In addition, employers and the third parties they do business with may not indefinitely retain the personal information of candidates who were not selected. Once the purposes for which the personal information was collected or used have been fulfilled, it must be securely destroyed. This obligation of immediate destruction does not apply if a law establishes a retention period.

Another option consists in anonymizing personal information to use it for serious and legitimate purposes. Caution and vigilance are required if the employer intends to anonymize personal information. It is a complex process that must ensure the impossibility of re-identifying an individual by any technological means. In light of current and future technological advancements, the Commission considers it nearly impossible to guarantee that anonymized information could not eventually be re-identified. It therefore favours the destruction of personal information.

Learn more about the retention and destruction of personal information for:

- [Enterprises](#)
- [Government departments and public bodies](#)

Job seekers, exercise your rights!

The Commission encourages candidates to question employers about the necessity of collecting their personal information. This approach, as well as the refusal to provide personal information that is not necessary, is legitimate. An employer cannot penalize a candidate for asserting their right to privacy.

If an employer continues to violate their obligations regarding the protection of personal information, [a complaint may be filed with the Commission](#).