

THE UNIFORM MISSING PERSONS ACT

And

COMMENTARIES

Comment:

The Manitoba Missing Persons Act was used as a template for this Uniform Act. Some of the provisions in the Uniform Act contain references to Manitoba legislation or agencies. An adopting jurisdiction will need to adjust this Uniform Act inserting references appropriate to their jurisdiction. For example, definitions will vary depending on the needs of an adopting jurisdiction and their applicable provincial or territorial legislation.

Definitions

1 In this Act,

"commanding officer" means

(a) the chief of a municipal police service,

(b) the commanding officer of *[insert applicable provincial or territorial police service in enacting jurisdiction]*, or

(c) the senior official in an agency or organization that is prescribed as a police service;

"designated judicial official" means *[insert title of judicial official the enacting jurisdiction has designated to hear matters under this Act]*;

"minister" means the minister appointed by the Lieutenant Governor in Council to administer this Act;

"missing person" means

(a) a person whose whereabouts are unknown and who has not been in contact with those persons who would likely or normally be in contact with the person, or

(b) a person

(i) whose whereabouts are unknown despite reasonable efforts to locate the person, and

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(ii) whose safety and welfare are feared for given the person's age, physical or mental capabilities or the circumstances surrounding the person's absence;

Comment:

Consideration was given to whether the impact of a presumption of death on missing persons investigations and the ability to request information if a person is presumed dead. It was concluded that presumption of death need not be an impediment to pursuing a missing persons investigation and therefore there was no need to specifically address this in the Uniform Act. Both concepts can operate simultaneously. A person presumed dead for the purpose of certain legislation could still be the subject of a missing persons investigation.

The wording of this section differed slightly between AB, MB and NS. The Working Group chose to maintain the phrase “whereabouts are unknown”, consistent with MB and NS Acts, in order to clarify that the person is indeed missing, and not simply (intentionally or not) out of contact with those in their network with whom they would typically have contact.

"person", except when used to refer to a missing person, includes a partnership, unincorporated association and public body;

"personal health information" means personal health information as defined in *[insert title of applicable Act in enacting jurisdiction that defines personal health information, if applicable]*.

"police service" means

(a) a municipal police service,

(b) *[insert applicable provincial or territorial police service in enacting jurisdiction]*, or

(c) a prescribed agency or organization;

"prescribed" means prescribed by regulation;

"public body" means *[insert applicable definition of public body or equivalent from applicable Act in enacting jurisdiction respecting protection of privacy, if applicable]*;

"record access order" means an order made under section 4;

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"search order" means an order made under section 3;

"vulnerable person" means a person who is *[insert description of all applicable situations in enacting jurisdiction where a substitute decision maker is appointed for an adult, such as an order appointing a committee, guardian, substitute decision maker or other equivalent person]*.

Comment:

The intent of the definition of "vulnerable person" is to capture within the definition those persons with limited mental capacity who are recognized in other legislation within the jurisdiction as needing the assistance of others in decision making. Each jurisdiction adopting this legislation will need to adjust this definition to include these individuals.

When application may be made

2(1) A member of a police service may apply for a search order or a record access order if the police service is conducting an investigation into a missing person.

2(2) An application for a search order or a record access order may be made to a designated judicial official, without notice, in the prescribed manner.

Comment:

This section may need to be adjusted for jurisdictions without justice of the peace programs

Search order

3 A designated judicial official who is satisfied by information on oath that there are reasonable grounds to believe that a missing person who is a minor or a vulnerable person may be in a dwelling or other premises may make an order authorizing members of a police service to enter, by force if necessary, the dwelling or other premises and search for the missing person.

Comment:

The application for a Search Order under s.3 is appropriately satisfied by information on oath. In addition it is noted that the regulations accompanying the Act should specify that the application is to proceed ex parte.

Record access order

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4(1) A member of a police service may apply for an order requiring a person to give members of the police service access to, and if requested, copies of, the records set out in subsection (2) in respect of a missing person that

- (a) may assist the police service in locating the missing person; and
- (b) are in the possession or under the control of the person.

Comment:

The intent is that applications would be ex parte. An application under section 4 would proceed by way of the form and process that would be set out in the accompanying regulations. For process expediency and clarity, the regulation should specify that the application is to proceed ex parte.

4(2) Access to the following records may be required in an order made under this section:

- (a) records containing contact or identification information;
- (b) telephone and other electronic communication records, including, without limitation,
 - (i) records related to signals from a wireless device that may indicate the location of the wireless device,
 - (ii) cell phone records,
 - (iii) inbound and outbound text messaging records, and
 - (iv) Internet browsing history records;
- (c) global positioning system tracking records;
- (d) video records, including closed circuit television footage;
- (e) records containing employment information;
- (f) records containing personal health information;

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(g) records from a school, university or other educational institution containing attendance information;

(h) records containing travel and accommodation information;

(i) records containing financial information;

(j) any other records specified in the order that the designated judicial official considers appropriate.

4(3) The designated judicial official may make an order under this section if he or she is satisfied that the order may assist the police service in its attempts to locate the missing person.

Comment:

The Working Group discussed what constitutes “reasonable grounds” and “may assist” for the purpose of obtaining an access order, and whether this is a sufficient threshold.

Discussion included the potential for courts to interpret a different standard into the Act, versus the urgent need for the information in the circumstances and the fact that investigations would be very preliminary at this stage.

The important factor is the purpose of the act – which is focused on locating a missing person, and is not focused on a criminal investigation.

4(4) If the missing person is a minor or a vulnerable person and there are reasonable grounds to believe that the missing person may be in the company of another person, the designated judicial official may order that members of the police service be given access to, and if requested, copies of, the records set out in subsection (2) in respect of the person who may be accompanying the missing person.

4(5) The designated judicial official may impose any restrictions or limits on the records to be produced in an order under this section that he or she considers appropriate.

4(6) The designated judicial official may include a provision in an order under this section requiring a person to provide members of the police service with an accounting of the efforts made by the person to locate any records that cannot be found.

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Emergency demand for records

5(1) If a member of a police service has reasonable grounds to believe that

- (a) a missing person is at risk of imminent serious bodily harm or death;
- (b) immediate access to the records set out in subsection (2) may assist the police service in locating the missing person before he or she suffers any harm; and
- (c) it is not practicable to obtain a record access order, given the urgency of the circumstances;

he or she may serve a written demand on a person requiring that person to give members of the police service access to those records that are in the person's possession or under the person's control.

5(2) The following records in respect of a missing person may be specified in a demand under subsection (1):

- (a) records containing contact or identification information;
- (b) the following telephone and electronic communication records:
 - (i) records related to signals from a wireless device that may indicate the location of the wireless device,
 - (ii) cell phone records,
 - (iii) inbound and outbound text messaging records,
 - (iv) Internet browsing history records;
- (c) global positioning system tracking records;
- (d) video records, including closed circuit television footage;

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(e) records containing employment information to the extent that the records might indicate when the missing person was last seen or heard from and when, where and how the missing person is paid;

(f) records containing personal health information to the extent that the records might indicate if the missing person has recently been admitted to a hospital and, if the records do so indicate, which hospital and the date and time of, and the reason for, admission;

(g) records from a school, university or other educational institution containing attendance information;

(h) records containing travel and accommodation information;

(i) records containing financial information to the extent that the records might indicate

(i) if one or more of the missing person's credit cards were recently used and, if the records do so indicate, when, from where and for what purpose the credit cards were used, or

(ii) if one or more of the missing person's bank accounts were recently accessed and, if the records do so indicate, when, from where and for what purpose the bank accounts were accessed;

(j) any other prescribed records.

Comment:

The reference in (j) to any other prescribed records ensures others can be added by way of regulation.

5(3) A demand for records must be in a prescribed form.

5(4) A person who is served with a demand for records must locate all the records specified in the demand that are in his or her possession or under his or her control and give members of the police service access to, and if requested, copies of those records as soon as possible, having regard to the urgent circumstances of the demand.

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5(5) When a member of a police service serves a demand for records on a person, he or she must file a written report with his or her commanding officer that sets out the circumstances in which the demand was made.

Comment:

These reporting provisions in this section are focused on the ability of the police, in certain urgent circumstances, to require the production of records by simply making a demand. As the emergency demand is a non-court order search and the police have significant discretion to obtain personal information, this disclosure may be important for transparency purposes. Some jurisdictions have chosen to not include this subsection. An alternative might be to involve the Privacy Commissioner in subsequent reviews of these disclosures.

Consequence of failing to comply with demand

6(1) If a person who is served with a demand for records under section 5 does not comply with the demand, a member of the police service may apply to a designated judicial official for an order directing the person to comply with the demand.

6(2) The designated judicial official may make an order requiring the person to comply with a demand for records if he or she is satisfied that

(a) the records in question are in the possession or under the control of the person; and

(b) the making of the order may assist the police service in locating the missing person.

Comment:

The purpose of obtaining this order is to put the record holder in the position of being found in contempt of court if there is subsequently a failure to comply. To be effective the order must be given by a court whose orders can be enforced by contempt proceedings. An enacting jurisdiction should make sure that these orders would be given by such a court.

6(3) An order under this section may be subject to any terms or conditions that the designated judicial official considers appropriate in the circumstances.

Restriction on use

7(1) Despite *[insert applicable provisions from legislation in enacting jurisdiction that impose restrictions on use of personal information by public bodies]*, a police service may use information and records obtained under this Act only for

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- (a) the purpose of locating a missing person or a use consistent with that purpose; or
- (b) a purpose for which the information may be disclosed under section 8.

Comment:

An enacting jurisdiction will need to identify the appropriate legislation from their jurisdiction to be referred to in this section.

7(2) If the investigation into a missing person becomes a criminal investigation, this section does not prevent information and records obtained by a police service under this Act from being used in the criminal investigation.

Disclosure of information and records limited

8(1) Any information or records obtained by a police service under this Act are confidential and may not be disclosed except in accordance with this section.

8(2) Despite *[insert applicable provisions from legislation in enacting jurisdiction that impose restrictions on disclosure of personal information by public bodies]*, information or records obtained by a police service under this Act may be disclosed only

- (a) for the purpose of locating a missing person or a use consistent with that purpose;
- (b) when required by law;
- (c) to another law enforcement agency in Canada or a law enforcement agency in another country under an arrangement, written agreement, treaty or legislative authority, but only to the extent necessary to further the investigation into the missing person;
- (d) if the person the information or records are about has consented to the disclosure; or
- (e) in accordance with subsections (3) to (6).

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Comment:

The purpose of this section is to indicate that despite any disclosures permitted according to the provincial privacy information legislation, the information is ONLY allowed for the permitted uses described. The intention is to safeguard the information obtained and ensure it is used only for the purposes authorized by the Act.

An enacting jurisdiction will need to identify the appropriate legislation from their jurisdiction to be referred to in this section.

Particularly if a jurisdiction recognizes “mature minors” a jurisdiction may wish to specifically address the issue of sharing information with the parents of minors or the guardian of vulnerable persons. Consideration could be given to including a specific provision for police to share information in the case of minors or vulnerable persons for the purposes of protecting their safety. The right of parents and guardians to information in a jurisdiction as well as the current practices of police and the parameters of provincial privacy legislation should be taken into account.

This uniform Act does have an impact on privacy principles and each jurisdiction considering adopting this Uniform Act should consult with the privacy commissioner in their jurisdiction.

8(3) For the purposes of furthering its investigation into a missing person, a police service may release the following information obtained under this Act in respect of the missing person to the public through a media release, by posting the information on a website or in any other manner the police service considers appropriate:

- (a) the missing person's name;
- (b) a physical description of the missing person;
- (c) a photograph of the missing person;
- (d) information about any medical conditions of the missing person that pose a serious or immediate threat to his or her health;
- (e) pertinent vehicle information;
- (f) the location where the missing person was last seen;
- (g) the circumstances surrounding the disappearance of the missing person.

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8(4) A police service may publicly announce that a missing person has been located.

8(5) A police service may disclose information and records obtained under this Act to other police services, law enforcement agencies and government departments or agencies, to the extent necessary to coordinate investigations and other activities respecting missing persons.

8(6) If an investigation into a missing person becomes a criminal investigation, this section does not prevent the disclosure of information and records obtained under this Act for the purposes of the criminal investigation.

No access to privileged information

9 Nothing in this Act compels the disclosure of any information or records that are subject to any type of legal privilege.

No limit on powers of ombudsman or adjudicator

10 Nothing in this Act is to be construed as limiting the powers and duties of *[insert title of official in enacting jurisdiction responsible for investigating concerns regarding the disclosure of personal information, if applicable]*.

Comment

An enacting jurisdiction will need to identify the appropriate legislation from their jurisdiction to be referred to in this section.

Other rights unaffected

11 This Act does not restrict any authority that a police service would otherwise have to collect any information or records.

Offence

12 A person who wilfully contravenes section 7 or 8 is guilty of an offence and is liable on summary conviction to a fine of not more than \$10,000.

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Comment:

The Working Group determined that it would be appropriate to have the level of the fine in this section similar to fine levels that are found in an enacting jurisdiction's provincial privacy legislation.

Protection from liability

13 No action or proceeding may be brought against a member of a police service or any other person in respect of anything done or omitted to be done in good faith under this Act.

Annual report re emergency demands

14(1) A police service must prepare an annual report respecting its use of demands for records under section 5.

14(2) The report must

(a) indicate the number of missing person investigations in which a demand for records under section 5 was made in the year and the total number of persons who were served with a demand in that year; and

(b) contain prescribed information respecting each demand.

Comment:

This section focuses on the ability of the police, in certain urgent circumstances, to require the production of records by simply making a demand. As the emergency demand is a non-court order search and the police have significant discretion to obtain personal information, this disclosure to the commanding officer and the disclosure set out in section 14 may be important for transparency purposes. For this reason the Working Group included these provisions. Some jurisdictions have chosen to not include this sub-section. An alternative might be to involve the Privacy Commissioner in subsequent reviews of these disclosures.

14(3) The police service must

(a) provide the annual report to a government official designated by the minister; and

(b) make the annual report available to the public in a prescribed manner.

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Comment:

These reporting provisions should be focused on the ability of the police, in certain urgent circumstances, to require the production of records by simply making a demand. As the emergency demand is a non-court order search and the police have significant discretion to obtain personal information, this disclosure may be important for transparency purposes. For this reason the Working Group included these provisions. Some jurisdictions have chosen to not include this sub-section. An alternative might be to involve the Privacy Commissioner in subsequent reviews of these disclosures.

Crown bound

15 This Act binds the Crown.

Comment:

The intent is that this legislation would be binding on the Crown. How that is accomplished may vary between jurisdictions.

Regulations

16 The Lieutenant Governor in Council may make regulations

- (a) respecting applications for search orders and record access orders;
- (b) respecting applications for orders under section 6;
- (c) respecting the service of orders under this Act and of demands for records under section 5;
- (d) respecting reports under subsection 5(5);
- (e) respecting the collection, use and retention of information and records obtained under this Act;
- (f) respecting the type of records to be kept and maintained under this Act;
- (g) defining terms used but not defined in this Act;

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(h) prescribing anything referred to in this Act as being prescribed;

(i) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the purposes of this Act.

Review of Act

17 A special committee of the Legislative Assembly must begin a comprehensive review of this Act within 5 years of the coming into force of this Act and must submit to the Legislative Assembly, within one year after beginning the review, a report that includes any amendments recommended by the committee.

Comment:

This section is optional depending on the policies of an enacting jurisdiction in mandating the review of some key legislation.