

Office of the
Information and
Privacy Commissioner
of Ontario Submission
on Consultation Paper:
*Strengthening Corporate
Beneficial Ownership
Transparency in Canada*

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Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

INTRODUCTION

According to the *Strengthening Corporate Beneficial Ownership Transparency in Canada* consultation paper, Canada needs to increase corporate transparency in order to:

- combat money laundering, terrorist financing, tax evasion or avoidance, and other illicit activity
- ensure Canada's laws are consistent with international standards and best practices¹

The **Financial Transactions and Reports Analysis Centre of Canada** reported that 70% of money laundering and 50% of terrorist financing cases involved legal entities.² Similar findings were reported by **Open Ownership**. It claimed that 70% of corruption cases involve the use of anonymous companies and over \$1 billion (USD) has been recovered by governments using beneficial ownership data.³

Other jurisdictions are taking action to strengthen their corporate transparency regimes, and Canada needs to keep pace with these international developments. For example, the European Union's (EU) revised *Anti-Money Laundering Directive* required members to have publicly accessible government-maintained beneficial ownership registries as of January 10, 2020. Increasingly, public beneficial ownership information is becoming a global norm. Open Ownership counted 87 countries that have made commitments or started to implement beneficial ownership transparency reforms.⁴

The Office of the Information and Privacy Commissioner of Ontario (IPC) provides oversight of Ontario's access to information and privacy laws. These laws include rules about when government organizations and health care providers can collect, use and disclose personal information.

In fulfilling our mandate, we act independently of government to uphold and promote open and transparent government and protect personal privacy. This often requires a balancing between the privacy interests of individuals and the public interest in the disclosure of personal information. One of our important roles is to comment on proposed government programs and to work with provincial and municipal government organizations to ensure compliance with the laws.

1 Innovation, Science and Economic Development Canada and Finance Canada, *Consultation Paper: Strengthening Corporate Beneficial Ownership Transparency in Canada*, February 2020, <https://www.ic.gc.ca/eic/site/142.nsf/eng/00001.html>, p. 8 [PDF Version].

2 Ibid, p. 7.

3 Open Ownership, (accessed March 6, 2020), <https://www.openownership.org/>.

4 Open Ownership, *The Financial Secrecy Index results: progress on beneficial ownership transparency*, February 2020, <https://www.openownership.org/blog/the-financial-secrecy-index-results-progress-on-beneficial-ownership-transparency/>.

Greater transparency of corporate beneficial ownership is critically important to help reduce unlawful activity, and enhance a fair and just business environment. For these reasons, there is a public interest in making this information widely available. We support federal, provincial and territorial efforts to coordinate and enhance openness of corporate ownership while protecting privacy.

SHOULD CANADA ESTABLISH A PUBLIC REGISTRY (OR PUBLIC REGISTRIES) OF BENEFICIAL OWNERSHIP?

The federal government and a number of provinces passed legislation requiring private corporations to create and maintain their own registers of beneficial owners. Such registers are useful, but they do not go far enough in terms of transparency and accessibility.

The IPC strongly supports Canada moving to a government-controlled registry or registries of beneficial ownership data. Such registries consolidate the data, making it more accessible and helping to bring a level of accountability and enforcement lacking in decentralized corporation-maintained registers. However, to enhance transparency about beneficial ownership, the ultimate objective for the federal, provincial and territorial governments should be the creation of a public registry or registries.

In 2019, British Columbia (BC) amended its *Business Corporations Act* to require private corporations to keep records of beneficial owners in their corporate records office. Just recently, the province's Ministry of Finance completed consultation on the idea of a public beneficial ownership registry.

The BC consultation paper noted numerous concerns about corporations' transparency registers, including that law enforcement and other authorities need to go to the physical location of each company's office in order to inspect them. Other concerns about this approach's effectiveness in curtailing money laundering and other illicit activity include:

- it requires initial evidence that the company is being used for criminal activities before law enforcement will think to check the company's transparency register
- the process of physical inspection is costly for law enforcement
- the process of physical inspection itself has the potential to alert criminals that they are being investigated
- data analysis cannot be performed because the data is not in a single location

As noted in the BC consultation paper, advocates argue these challenges could be alleviated by requiring companies to upload their transparency register information to government-maintained registries. Centralized registries allow law enforcement, tax authorities and authorized regulators to access the data much faster and in a more cost-effective manner.⁵ This, in turn, makes it easier for government and law enforcement to investigate and prevent illicit financial activity.

Transparency International (TI) Canada believes creating a publicly available registry of beneficial ownership data is a low-cost, high-impact solution that would immensely benefit law enforcement, regulators, tax authorities, businesses, financial institutions, investors and the general public. According to TI Canada, one of the key benefits would be saving the government (and therefore, taxpayers) money. This was supported by findings made by a cost-benefit analysis conducted by the United Kingdom (UK) government and the European Commission.⁶

Some commentators believe there are broader economic benefits as well. They contend that a public registry of beneficial ownership data could boost countries' economies by increasing tax revenue, curbing illicit flow of money out of the country and increasing the economy's attractiveness to foreign investors.⁷

Other potential benefits are that public registries create an additional layer of scrutiny from civil society and the public (discussed below), and enable customers and investors faced with complex legal and geographic boundaries to know who they are dealing with, which supports more informed decision-making.⁸

The transparency afforded by public registries enhances businesses' and governments' ability to assess risk related to particular transactions or commercial relationships. EY's 2016 Global Fraud Survey indicated that 91% of senior executives surveyed worldwide believed it was important for them to know the beneficial owner of the entities with which they do business.⁹

5 British Columbia Ministry of Finance, *B.C. Consultation on a Public Beneficial Ownership Registry*, <https://engage.gov.bc.ca/app/uploads/sites/121/2020/01/386142-BCABO-Consultation-Document-For-Release.pdf>, p. 12.

6 Transparency International Canada, *No Reason To Hide – Unmasking the Anonymous Owners of Canadian Companies and Trusts*, 2016, <http://www.transparencycanada.ca/wp-content/uploads/2017/05/TIC-BeneficialOwnershipReport-Interactive.pdf>, p. 35.

7 J. Ukwu, 2017, *Buhari's government begins move to end secret company ownership in Nigeria to fight corruption*. Naija.ng., <https://www.naija.ng/1124014-federal-government-moves-uncover-beneficial-owners.html> (accessed September 18, 2018), as cited in Open Ownership, The B Team and The Engine Room, *Data Protection and Privacy in Beneficial Ownership Disclosure*, May 2019, <https://www.theengineroom.org/wp-content/uploads/2019/05/full-privacy-public-interest-updated.pdf>, p. 28.

8 ISED Canada and Finance Canada, *Consultation Paper: Strengthening Corporate Beneficial Ownership Transparency in Canada*, p. 11.

9 EY, *Corporate misconduct — individual consequences, Global enforcement focuses the spotlight on executive integrity*, 14th Global Fraud Survey, 2016, (accessed March 9, 2020), [https://www.ey.com/Publication/vwLUAssets/Global_Fraud_Survey_2016/\\$FILE/ey-global-fraud-survey-final-2016.pdf](https://www.ey.com/Publication/vwLUAssets/Global_Fraud_Survey_2016/$FILE/ey-global-fraud-survey-final-2016.pdf), p. 6.

Whether there is a single, centralized public registry or a network of public registries, we think government-controlled databases offer the most efficient, effective and timely way of accessing and analyzing beneficial ownership data. If federal, provincial and territorial governments proceed with separate public registries, having one public portal with all relevant links would greatly enhance convenience and accessibility.

PROTECTING PRIVACY IN THE CONTEXT OF A PUBLIC REGISTRY

This office oversees privacy laws that apply to the processing of personal information by the public and health sectors. These laws are often misconstrued as creating barriers to disclosing personal information, even where it is in the public interest to make disclosures. Similarly, privacy and privacy laws have been raised as a reason why beneficial ownership data should not be made public. To help determine whether these are legitimate concerns, it is necessary to parse out the potential privacy issues associated with public beneficial ownership registries.

IS PERSONAL INFORMATION INVOLVED?

When identifying and assessing potential privacy issues related to public beneficial ownership registries, it is important to determine, as a first step, whether personal information is involved.

Across international jurisdictions, most beneficial ownership registers or registries collect information about individual beneficial owners such as their name, date of birth, identification numbers, personal address and nationality. For example, the corporation registers required under the *Canada Business Corporations Act* must include names, dates of birth, latest known address, as well as jurisdiction of residence for tax purposes (section 21.1 (1)).

Not all information about individual beneficial owners constitutes personal information. Using Ontario's public sector privacy legislation as an example, personal information is information that identifies an individual (that is, a natural person) acting in a personal capacity. The context in which the information appears is a factor to be considered in determining whether it is personal information. As a general rule, information about an individual in a business, professional or official capacity is not considered personal information.¹⁰ Ontario's legislation specifically excludes the name, title, contact information or designation that identifies a person in a business, professional or official capacity from the definition of personal information.

¹⁰ IPC, *What is Personal Information?* Fact Sheet, October 2016, <https://www.ipc.on.ca/wp-content/uploads/2016/10/what-is-personal-information.pdf>.

The government will need to determine if the information involved in the registries is personal information by carefully considering the nature of each data element to be collected, used and disclosed.

COMPLIANCE WITH PRIVACY LEGISLATION

Steps must be taken to ensure compliance with the applicable privacy legislation for the personal information collected, used or disclosed as part of a government-controlled beneficial ownership registry. However, nothing in Ontario's privacy laws would impede the creation by legislation of a public registry of beneficial ownership because those laws permit the government to collect, use and disclose personal information when required by another law. Similar provisions are in public sector privacy statutes across the country. Therefore, the government could enact a **legislative framework** authorizing the publication of personal information as part of a public beneficial ownership registry.

Further, legislative measures requiring the collection, use and disclosure of personal information as part of a beneficial ownership registry would not contravene basic principles of privacy given the broader public interest in the creation of such registries.

In May 2019, **Open Ownership**, The B Team and **The Engine Room** published its study *Data Protection and Privacy in Beneficial Ownership Disclosure*. The study concluded that “public disclosure of beneficial ownership data is compatible with data protection regimes. Further, public company ownership data is necessary to achieve a legitimate aim, and its disclosure can be managed so as to be proportionate to any potential harms.”¹¹

DATA MINIMIZATION

Data minimization is a bedrock principle of data protection laws around the world, including Ontario's privacy legislation. The principle requires that only the personal information necessary to achieve certain specified and legitimate goals or purposes should be collected, used, retained and disclosed. It also requires that personal information be destroyed as soon as it is no longer needed. A related requirement is proportionality that requires the amount, type and sensitivity of the personal information collected, used and disclosed to be consistent with, and proportional to, the program or system's purpose.

¹¹ Open Ownership, The B Team and The Engine Room, *Privacy or Public Interest? Making the Case for Public Information on Company Ownership*, <https://www.openownership.org/uploads/privacy-report-summary.pdf>, p. 2.

If the government proceeds with a public registry or registries, it will need to ensure that only the minimum amount of personal information is collected, used and disclosed to support their purposes. The principles of data minimization and proportionality will be particularly important in the context of determining what personal information, if any, should be made publicly available. This issue is examined further below under the discussion of **restricted access** and **exemptions**.

In the context of public beneficial ownership registries, the government should be required to:

- not collect or disclose personal information, if other information would meet the purpose(s)
- only collect or disclose the minimum personal information reasonably necessary to achieve the purpose(s), and that the personal information be proportional and justified for those purpose(s)
- only disclose personal information in the least identifiable form required to fulfil the purpose(s)

As noted in the *Data Protection and Privacy in Beneficial Ownership Disclosure* paper, at a minimum, the government should ensure that no more information be published than is necessary to achieve the aims of beneficial ownership transparency. Registries should share enough data with the public to allow them to participate in oversight, such as identifying suspicious patterns for law enforcement and other officials to take forward, but no more.¹²

LEGISLATIVE FRAMEWORK

The creation of a public beneficial ownership registry or registries will require legislative reform to authorize the collection, use and disclosure of all relevant information, including personal information. To enhance transparency and address potential privacy issues, at a minimum, the legislative framework should expressly define:

- the information, including personal information, to be collected, used and disclosed
- the information, including personal information, that may be publicly disclosed
- **verification** requirements for beneficial ownership data
- timelines for submission, review and **updates** of beneficial ownership data

¹² Open Ownership, The B Team and The Engine Room, *Data Protection and Privacy in Beneficial Ownership Disclosure*, May 2019, p. 30.

- **access restrictions and exemptions**, including associated review and approval process
- accountability and transparency requirements for the public registry or registries
- **data minimization** and appropriate de-identification requirements
- minimum data retention requirements
- **open data** requirements
- notice, complaint process, and redress mechanism for beneficial owners
- governance including investigative authority, and independent oversight
- sanctions and penalties

PRIVACY IMPACT ASSESSMENT

The government should conduct a comprehensive privacy impact assessment (PIA) to help it identify, evaluate and mitigate the potential privacy risks associated with a public beneficial ownership registry or registries. Such analysis will be critical to identifying the purposes of the proposed collection, use and disclosure of information, evaluating the effectiveness and appropriateness of verification options, as well as defining possible access limitations (administrative and technological), exemptions, and appropriate levels of de-identification, if any.

The government also should undertake periodic reviews of its beneficial ownership scheme to evaluate its efficiency and effectiveness, and determine whether privacy risks are appropriately mitigated.

IF YES, WHAT KEY FEATURES WOULD MAKE A PUBLIC REGISTRY (OR PUBLIC REGISTRIES) EFFECTIVE?

NO COST FOR ACCESS

Globally, there is a varied approach to charging fees to access beneficial ownership data. For example, the UK public registry is free, while EU members may require payment of a small fee.

The IPC strongly advocates for Canada's public beneficial ownership registries to be accessible free of charge. While acknowledging the costs to create and maintain a

public registry, in order to achieve the full benefits, it is imperative that fees do not become a barrier to access.

As noted above, free access to public registries allows for greater scrutiny from non-governmental stakeholders, including civil society and business, which could improve the overall quality and accuracy of the data. This is particularly important given limited government resources and capacity to verify information. For example, according to **Transparency International UK**, as of February 2018, the UK's Companies House Service had 20 people policing the compliance of four million companies.¹³

By making beneficial ownership data publicly available for free, civil society, investigative journalists, researchers and other players can study the data and combine it with other public datasets, increasing the likelihood of identifying criminal activity.¹⁴ Not only do these other parties provide an additional set of eyes, they may have specialized knowledge that allows them to analyze information or identify suspicious activities that government authorities might miss.¹⁵ If inconsistencies are found, they can be reported to the government for further follow-up.

There has been some skepticism about whether civil society would have the capacity, technical expertise and motivation to review and interpret a centralized registry.¹⁶ However, one of the lessons of the UK experience is that making beneficial ownership data publicly available free of charge can greatly enhance its accuracy by enabling greater oversight and scrutiny. The UK's Companies House Service confirmed that within the first six months they followed up on multiple contacts from the public highlighting inaccuracies in the data. Free access enabled more users to review and report errors in the data.¹⁷

13 Transparency International UK, 2018. *UK companies set up to launder proceeds of corruption*, <http://www.transparency.org.uk/press-releases/uk-companies-set-up-to-launder-proceeds-of-corruption/>, (accessed September 18, 2018), as cited in Open Ownership, The B Team and The Engine Room, *Data Protection and Privacy in Beneficial Ownership Disclosure*, May 2019, p. 24.

14 Loren Treisman, Open Government Partnership, *Who Owns our Companies: Why Privacy isn't Always in the Public Interest*, June 20, 2019, <https://www.opengovpartnership.org/stories/who-owns-our-companies/>.

15 Open Ownership, The B Team and The Engine Room, *Data Protection and Privacy in Beneficial Ownership Disclosure*, May 2019, p. 25.

16 H. Burggraf, 2018, *House of Lords rejects public beneficial ownership registers for six overseas territories*, International Investment, <http://www.internationalinvestment.net/products/house-lords-rejects-public-beneficial-ownership-registers-overseas-entities/>, (accessed August 10, 2018), as cited in Open Ownership, The B Team and The Engine Room, *Data Protection and Privacy in Beneficial Ownership Disclosure*, May 2019, p. 24.

17 Open Ownership and Global Witness, *Learning the lessons from the UK's public beneficial ownership register*, October 2017, <https://www.openownership.org/uploads/learning-the-lessons.pdf>, p. 3. Companies House – Email Correspondence with Global Witness – 9 February 2017.

VERIFICATION OF DATA

Creating a public registry without verified data undermines its purpose and benefits. False information may be inadvertently or deliberately submitted, and the absence of thorough verification makes the publication of errors and misleading information more likely.

Verification may be reactive involving follow-up when a specific issue arises, or proactive requiring the government to monitor entries and to take action when something is suspicious or otherwise concerning.¹⁸ Technological measures also could be used to enhance accuracy at point of entry, or to crosscheck data from other sources (for example, matching it with information available on private or public databases).

Advocacy groups Open Ownership and **Global Witness** have said that one of the most significant weaknesses of the UK registry is that submitted data is not verified. Global Witness' 2018 analysis revealed that thousands of companies filed suspicious entries or were not complying with the rules.¹⁹ To verify the accuracy of the data, Open Ownership and Global Witness called for a system to submit identity documentation; the crosschecking of data against other government data sets; and systems for members of the public to easily highlight or report suspected inaccurate data in the registry.²⁰

In 2019, the **Tax Justice Network** published a report called *Beneficial Ownership Verification: Ensuring the Truthfulness and Accuracy of Registered Ownership Information*. It observed that verifying beneficial ownership data continues to be a challenge.²¹ The paper noted that for effective verification it is important to:

- authenticate the individuals (that is, determine if they are who they say they are)
- determine their authorization (that is, do they have the right to make the claim)
- validate the information and documentation submitted (that is, ensure its legitimacy)²²

18 BC Ministry of Finance, *B.C. Consultation on a Public Beneficial Ownership Registry*, p. 16.

19 Maira Martini, *Verifying the beneficial owner of companies. Why and how*, Voices for Transparency, March 19, 2019, (accessed March 10, 2020), <https://voices.transparency.org/verifying-the-beneficial-owner-of-companies-why-and-how-d6e24bd9f99f?gi=680c145c072a>.

20 Michael Klein, *The threat of public beneficial ownership registers*, The Cayman Island Journal, June 6, 2018, <https://www.journal.ky/2018/06/06/the-threat-of-public-beneficial-ownership-registers/>.

21 Andres Knobel, *How to verify beneficial ownership information – new report*, Tax Justice Network, January 22, 2019, <https://www.taxjustice.net/2019/01/22/how-to-verify-beneficial-ownership-information-new-report/>.

22 Tax Justice Network, *Beneficial ownership verification: ensuring the truthfulness and accuracy of registered ownership information*, January 22, 2019, https://www.taxjustice.net/wp-content/uploads/2019/01/Beneficial-ownership-verification_Tax-Justice-Network_Jan-2019.pdf.

The paper proposed the application of big data analytics to identify red flags (that is, potential issues), similar to the analytics applied by banks and credit cards to prevent online fraud. Such analytics are only possible with centralized beneficial ownership registries.

Analytics could find patterns indicating that registered information is unreliable. For example, when a multi-million dollar company registers as its beneficial owner an individual who has no declared income, no bank account and has been living for decades at the same address located in an impoverished neighborhood, the system would raise a red flag. Then the relevant authorities would be notified and scrutinize the suspicious cases.²³

While recognizing the high volume of private corporations in Canada, the challenges related to complex ownership structures of multi-national companies, and the government resources required for a proactive approach, the IPC thinks that something more than reactive verification is needed.

MEANS OF VERIFYING IDENTITIES

The federal consultation paper asks what means could be used to verify identities (for example, driver's licence, passport or bio-identifiers). Experience in other jurisdictions has demonstrated the need for verification of beneficial owners' identity (that is, the justification for some form of verification is clear).

The IPC recognizes that verifying the identity of individuals who are beneficial owners will involve personal information. To protect privacy and comply with applicable privacy legislation, the government must adopt a data minimization approach to the design and operation of the system (that is, limit the collection, use, disclosure and retention of personal information only to the minimum needed for the verification purpose).

In addition, the use and disclosure of personal information collected for that purpose must be appropriately restricted. Without legal authority or individual consent, personal information collected for one purpose should not be used or disclosed for new and unrelated purposes. Further, the amount, type and sensitivity of personal information collected, used, retained and disclosed in the context of verification must be consistent with, and proportional to, the purpose of verification. The IPC questions the justification for a bio-identifier for this purpose.

The government also should conduct regular reviews of its verification process to ensure that it is appropriate and effective, while minimizing the amount of personal information involved.

23 Knobel, *How to verify beneficial ownership information*, Tax Justice Network, January 22, 2019.

FREQUENCY OF UPDATES

Currently, both the federal and BC legislation require private corporations to take reasonable steps to ensure their transparency registers are accurate, complete and up-to-date. This review is to be done at least once during each financial year. BC's legislation also defines a duty for companies to update their transparency registers within 30 days of becoming aware of new or different information through the annual update or any other means.

For a public registry or registries to be useful, the data must be accurate, complete and up-to-date. It is insufficient to update annually if there have been substantive changes within the year. While an annual review and re-submission of information is a useful baseline, the IPC thinks that additional event-driven updates should be required (that is, triggered by defined types of changes). Private corporations should be required to submit any changes to their beneficial ownership within a reasonable timeframe after such a change.

Again, the lessons of the UK are useful. Initially companies had to provide information about changes in their beneficial ownership on an annual basis. Now companies are required to update the registry within 28 days of any change to its beneficial ownership. According to Open Ownership the move to event-driven reporting for companies gave "a major boost to proactive compliance and the ability for UK authorities to follow up on companies failing to report or taking too long to identify their beneficial owners."²⁴

SHOULD THERE BE LIMITATIONS ON INFORMATION DISCLOSED THROUGH A PUBLIC REGISTRY (OR PUBLIC REGISTRIES)?

POTENTIAL RISKS TO BENEFICIAL OWNERS

The consultation paper states that the potential for identity theft, fraud and harassment becomes more acute when more information about individuals is made public. It also notes the risk of personal information being accessed by data harvesters or misused by foreign actors.²⁵ Kidnapping, violence, intimidation, extortion, and blackmail are other potential risks cited about public beneficial ownership registries.

²⁴ Open Ownership and Global Witness, *Learning the lessons from the UK's public beneficial ownership register*, October 2017, p. 6.

²⁵ ISED Canada and Finance Canada, *Consultation Paper: Strengthening Corporate Beneficial Ownership Transparency in Canada*, February 2020, pp. 11 and 14 [PDF Version].

Published personal information could be used in phishing campaigns, cyberattacks, identity theft, and other forms of fraud. Public beneficial ownership registry also could facilitate re-identification of data when combined with de-identified or otherwise anonymized data from other sources.²⁶

Conclusions from research on risks to beneficial owners seem mixed. **LexisNexis** research suggests that company directors are disproportionately more likely to be victims of identity fraud. The same research also highlights that this risk is most serious when information about them already has been published online, such as on social media.²⁷

In 2019, **Open Government Partnership** noted that there were “no documented examples of harm arising when company ownership information has been open and freely available,” nor was there “evidence that greater transparency has increased incidences of kidnapping or blackmail.”²⁸ Also in 2019, Open Ownership was “unable to identify documented examples of harms that have arisen from the publication of beneficial ownership data in open registers.”²⁹

The IPC cautions the federal government about rejecting the idea of public registries out of fear of potential harm to beneficial owners. However, these risks must be taken seriously given their significant consequences.³⁰ To address this concern, we encourage the government to take an evidence-based approach to its analysis, and to address legitimate risks through limited circumstance-specific exemptions (discussed below).

While the risk of identity theft, phishing and other cyberattacks are not exclusive to public beneficial ownership registries, they are real and continue to increase as more and more data is online. Limiting the personal information published by restricting access to, or generalizing, certain data elements could help address these risks.

26 Open Ownership, The B Team and The Engine Room, *Data Protection and Privacy in Beneficial Ownership Disclosure*, May 2019, p. 31.

27 LexisNexis Risk Solutions, 2016, *Who are the victims of identity fraud?*, <https://risk.lexisnexis.co.uk/insights-resources/White-Paper/who-are-the-victims-of-identity-fraud-wp-uk> (accessed August 13, 2018), as cited in Open Ownership, The B Team and The Engine Room, *Privacy or Public Interest? Making the Case for Public Information on Company Ownership*, p. 4.

28 Treisman, *Who Owns our Companies: Why Privacy isn't Always in the Public Interest*, June 20, 2019.

29 Open Ownership, The B Team and The Engine Room, *Data Protection and Privacy in Beneficial Ownership Disclosure*, May 2019, p. 32.

30 Treisman, *Who Owns our Companies: Why Privacy isn't Always in the Public Interest*, June 20, 2019.

RESTRICTED ACCESS TO PERSONAL INFORMATION

One of the consultation questions is whether access to certain beneficial ownership data should be restricted to law enforcement, tax and other authorities. Unlike a case-by-case consideration of potential exemptions, such an approach would result in a permanent limitation on access.

Whether there should be limitations on the information disclosed through a public registry or registries depends on the nature of the information involved. On the assumption that there will be personal information, there are several ways to protect it in a public beneficial ownership registry.

One way is not to publish specific categories of personal information or not to publish personal information related to a specific type of beneficial owner (for example, Ireland automatically protects information related to minors). Another method to minimize privacy risks is to employ a de-identification technique called generalization on categories of personal information to minimize the risk of it being linked to an identifiable individual. Generalization involves reducing the precision or detail of a data element to make it more general (for example, the Netherlands, Ireland, UK, Malta and Portugal only publish the month and year of birth of the beneficial owner, but not the day).

TIERED MODEL

The consultation paper speaks to a tiered model with varying levels of access. Certain information could be restricted to defined authorities and other entities. For example, in Luxembourg, all information in the registry is publicly available except for address and identification numbers of the beneficial owners). The paper also notes that concerns about the types of information made accessible through a public registry would need to be weighed against reasonable expectations of privacy.³¹

Privacy rights should never be a barrier to the collection, use or disclosure of information that is in the public interest. We believe that the public interest in access to beneficial ownership data outweighs the privacy rights of the affected individuals.

That said, it is important to balance appropriately the public interest with the privacy rights of individuals. Publication of beneficial ownership data supports the legitimate objectives of combatting money laundering and other illegal activities. While the disclosure of some personal information may be justified for that purpose, the government will need to ensure that what is published is both proportional and necessary to achieve these objectives.

31 ISED Canada and Finance Canada, *Consultation Paper: Strengthening Corporate Beneficial Ownership Transparency in Canada*, February 2020, p. 14 [PDF Version].

The EU *Anti-Money Laundering Directive* notes that in order to limit the interference with beneficial owners' private lives and to protect their personal information, the published data "should relate essentially to the status of beneficial owners of corporate or other legal entities ... and should strictly concern the sphere of economic activity in which the beneficial owners operate" (Paragraph 34).³²

Again, the principle of data minimization will be critical when the federal government defines the specific data to be publicly available. For example, while it may be necessary to collect and use the full date of birth and residential address to identify a specific beneficial owner, the privacy and other risks associated with publishing such personal information must be carefully considered. The UK excludes personal addresses and the day of the individual's birth from the public register, while such information is accessible to law enforcement and other authorized entities.

The IPC thinks it would be appropriate to exclude or generalize some personal information from a public beneficial ownership registry or registries. Such limitations must be justified, narrowly defined and set out in legislation, and be balanced with the public interest in disclosure.

The EU *Anti-Money Laundering Directive* may provide a useful model regarding what minimum information should be made publicly available. It states that at least the name, the month and year of birth, the nationality and the country of residence of the beneficial owner, as well as the nature and extent of the beneficial interest held, should be accessible in all cases to any person or organization that can demonstrate a legitimate interest (Article 30, Section 5).³³

EXEMPTIONS

The consultation paper also asks if beneficial owners should be able to seek exemptions from having some or all of their information made public. The IPC thinks some exemptions to a broad right of public access to beneficial ownership data may be appropriate in specific circumstances (for example, when there are legitimate and demonstrated personal safety risks).

A carefully designed and narrowly defined exemption process is important to allow individuals with legitimate security or privacy concerns to request that their details not

³² Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, (accessed March 11, 2020), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.156.01.0043.01.ENG.

³³ Ibid.

be published.³⁴ We recognize that determining a legitimate risk may be challenging. It will require supporting evidence, investigation and a thoughtful evaluation of risk.

The government will need to ensure that exemptions are justified and proportional. The IPC thinks the scope of exemptions must be sufficiently narrowly so they are the exception and not the rule. In addition, the review and approval process must be defined in the legislative framework to ensure consistency and transparency. The process also must be expeditious so it cannot be used to shelter bad actors (that is, delay the publication of beneficial ownership data during a protracted review process).

A number of jurisdictions have exemptions related to children and incapacity (for example, Austria, the Netherlands, Luxembourg, UK, and Finland). Some jurisdictions also have an exemption when serious risk of harm can be demonstrated. For example, the EU's *Anti Money-Laundering Directive* allows for an exemption to be granted in exceptional circumstances where access to the data would expose the beneficial owner to a disproportional risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or if the beneficial owner is a minor or otherwise legally incapable (Article 30, Paragraph 7a).³⁵ Member states may provide for an exemption from access to all or part of the information on the beneficial ownership registry on a case-by-case basis. In addition, they shall:

- ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances
- guarantee rights to an administrative review of the exemption decision and to an effective judicial remedy
- publish annual statistical data on the number of exemptions granted and reasons stated and report the data to the Commission (Article 30, Paragraph 7a)³⁶

According to a 2017 access request by Global Witness, of more than one million UK companies that provided beneficial ownership information in the first six months, only 270 individuals applied to have their information withheld on the basis that it would put them at risk and, of those, only five were granted.³⁷

34 Open Ownership, The B Team and The Engine Room, *Privacy or Public Interest? Making the Case for Public Information on Company Ownership*, p. 5.

35 Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, (accessed March 11, 2020), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.156.01.0043.01.ENG.

36 Ibid.

37 N. Palstra, 2018, *10 lessons from the UK's public register of the real owners of companies*, Global Witness, <https://www.globalwitness.org/en/blog/10-lessons-uks-public-register-real-owners-companies/> (accessed August 13, 2018), as cited in Open Ownership, The B Team and The Engine Room, *Data Protection and Privacy in Beneficial Ownership Disclosure*, May 2019, p. 39.

WHAT OTHER FACTORS SHOULD WE TAKE INTO CONSIDERATION WHEN ASSESSING THE PUBLIC REGISTRY (OR PUBLIC REGISTRIES) APPROACH?

OPEN DATA

The IPC strongly recommends that all beneficial ownership data to be made public should be published as open data (that is, machine-readable data, free of charge, without technical or legal restrictions). Other jurisdictions have adopted this approach.

For example, the UK company registry is searchable for free, and the entire database is available to access and use as open data. Implementing this approach dramatically increased usage of the UK company registry data. Use grew exponentially to over two billion data searches the year after the data was made free and open. This compared to just over six million access requests a year for paid information.³⁸

We think that all public data in a beneficial ownership registry or registries should be accessible through downloadable datasets or application programming interface (API). This allows users to develop their own tools for searching the data. In addition, there should be no limitations on copying, modifying, publishing, translating, adapting, distributing or otherwise using the data in any medium, mode or format for any lawful purpose.

Some jurisdictions require registration in order to access a beneficial ownership registry. For example, under the EU's *Anti-Money Laundering Directive*, member states can require registration so that access would be traceable. The Netherlands legislative proposal would require registration of natural persons/organizations entering the register, unless they are authorized authorities.

The IPC thinks that public data should be available to all without constraints. Requirements for users to register and identify themselves in order to access public data are barriers to access and use.

BENEFICIAL OWNERSHIP DATA STANDARD

Regardless of whether there is a single public registry or a network of registries, to enable inter-operability, integration and cross-jurisdictional use and analysis, it is vital that the content, file format and structure of beneficial ownership data across Canada be standardized. Only by taking a pan-Canadian approach will the benefits of public beneficial ownership registries be realized.

³⁸ Open Ownership and Global Witness, *Learning the lessons from the UK's public beneficial ownership register*, October 2017.

To facilitate trans-national linking and analysis, the IPC suggests the government determine whether the application of the **Beneficial Ownership Data Standard** is appropriate. As noted on the Open Ownership’s website, the standard provides a structured template for describing beneficial ownership as machine-readable data. The standard was developed to serve as a “framework for collecting and publishing beneficial ownership data, and enabling the resulting data to be interoperable, more easily reused, and higher quality.” Advocates maintain that a common data standard enables the exchange of data between implementing countries and allows for a rapid build-up of best practice onfb collecting, storing, and publishing beneficial ownership data.³⁹

39 Open Ownership, *The Beneficial Ownership Data Standard*, (accessed March 6, 2020), <https://www.openownership.org/what-we-do/the-beneficial-ownership-data-standard/>.



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