



MISSING PERSON LEGISLATION

There are many reasons why adults go missing – some are criminal in nature and others are not. When police suspect foul play or that a criminal offence is involved, they have procedures and tools to further their investigations. For example, police agencies can obtain personal records of the missing person, such as telephone, medical, banking and other types of information to help in their investigations.

In cases where no crime is suspected, police do not have the same investigative tools. The reason is that an adult has the right to privacy and since going missing is not a crime, these rights must be upheld. Over the past several years, the benefit of having access to confidential records has caused a number of provinces to introduce “*Missing Persons Acts*”. These *Acts* help to overcome obstacles in locating missing persons where there are no reasons to suspect a crime.

The *Missing Persons Act* balances an individual’s right to privacy with the police’s ability to locate the missing person. Key elements in the legislation are the definition of a missing person, the types of information police may request, procedures for requesting access to confidential records, how records can be dealt with, and what can be made public.

DEFINING A MISSING PERSON

With slight differences across provinces, a missing person is defined as someone who meets **BOTH** of the following criteria:

1. The person’s whereabouts are unknown and,
 - i. The person is not in contact with those they are likely to be in contact with, or
 - ii. It is reasonable to worry about the person’s safety because of either the circumstances surrounding the disappearance or because of any other prescribed factors; and
2. After undertaking reasonable efforts, police are unable to locate the person¹.

In other words, a missing person is someone whose location is unknown, the person has been out of touch with those regularly contacted, or there are safety concerns because of circumstances around the disappearance, or police are unable to locate the person.

TYPES OF INFORMATION AVAILABLE

Records that can be accessed include:

- Information relating to identity;
- Information relating to a communication device (e.g. emails, text messages, location signals, internet browsing history, etc.);
- Employment records;
- Health records;
- Education records;
- Financial records; and
- Information regarding travel and accommodation.

In addition, it is possible for police to request access to any type of record even if it is not listed above, but may help to locate the missing person.

ACCESS RECORDS AND INFORMATION

Before reviewing personal records, police need to file an application before a judge or justice of the peace. If the justice believes that the public is better served by finding the missing person, rather than maintaining the individual's right to privacy, the application may be granted. However, the information is only to be used as needed to further the investigation.

Essentially, *the Missing Persons Act* allows agencies to share confidential information that may assist police in locating the missing person.

SHARING PRIVATE INFORMATION PUBLICLY

Once obtained, confidential information can only be shared according to the rules set out by the *Missing Persons Act*. Specifically, if police believe that disclosing information will help to locate the missing person, the following types of information can be made public:

- The missing person's name;
- Age and physical description;
- A photo or other images;
- Whether the missing person has a medical condition requiring medication;
- Circumstances around the disappearance; or
- Places and times where the person was last seen or is known to go frequently.

ONCE THE MISSING PERSON IS LOCATED

Police may publicly announce that the missing person has been located. If the person is located deceased, police may choose to share this information, but there is no obligation to do so.

However, police cannot release information about where the missing person was located without the consent of the missing person.

THE MISSING PERSONS ACT AND ITS IMPORTANCE TO FAMILIES

An important aspect of the *Missing Persons Act* is that it is entirely focused on police procedures and tools, meaning that families are not entitled to this confidential information.

Despite this, it is important for families to know about the *Missing Persons Act*. By knowing about the legislation, families can ask police whether they will be using the legislation and, if not, why not. This helps to reassure the family that police are using all available tools in the search for a missing loved one.

¹ **[Missing Persons Act, 2018, S.O. 2018, c. 3, Sched. 7](#)**

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