

*The Background Screening Credentialing Council volunteer members drafted the following response to a question about personally identifiable information in Clause 4.5, version 2.0, effective April 6, 2018. This letter is an informal discussion of the noted issue and does not constitute a legal opinion of the BSCC.*

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**TITLE: Clause 4.5 – Date of Birth as Personally Identifiable Information**

Issue: I have a question regarding accreditation. I'm reviewing our procedures and in reference to clause 4.5 Information Security, I was wondering if someone would be able to define if personally identifiable information includes full date of birth?

The clause states:

Security procedures for personally identifiable information should include, but are not limited to: 1) all transmissions should be directed to a named party, 2) all transmissions must be clearly marked as "CONFIDENTIAL" and include a request to notify sender if received by someone other than named party, 3) if faxed, a cover page should always be used and must not contain any personally identifiable information, 4) if faxed, CRA shall have verified receiving fax is in a non-public location, 5) if transmitted using CRA network, such network should be secured using a minimum of 128 SSL, 6) if transmitted via Internet, data shall be encrypted or protected in a comparable manner.

I ask if full date of birth is personally identifiable information as quite a few of our vendors send full DOB on reports via email. The email is not encrypted and the document is not password protected. I am almost certain that they work with more than one accredited CRA. So I'm wondering if asking them to redact part of the DOB or send the email encrypted with a full DOB on it is required? Would you be able to clarify this for me?

Response: We have received your inquiry relating to clause 4.5 Information Security and whether it covers dates of birth as being encompassed within the term "personal identifying information" (hereafter "PII"). The short answer is yes. Legal names, social security numbers, driver license numbers and dates of birth when provided in combination are all encompassed within the definition of PII. The focus in determining whether, when and how to protect information is on whether the information being transmitted could be used to steal the identity of or otherwise harm the individual identified. So, a list of first names only with no other identifying information on the page, may not be PII requiring password protection, encryption or other safeguarding measures. A list of full names together with dates of birth, however, would be PII requiring appropriate security measures to be taken place.

When it comes to the transmission of reports from vendors, it is up to the CRA to dictate and define the manner of report and/or information transmission. A variety of mechanisms can be used but the key is for the CRA to define this with its vendors and then to adhere to the methodology/methodologies defined. The value of an accreditation program like the one implemented by NAPBS is that with time

the vendors who support the industry begin to adhere to the changed practices required. To this end, the industry as a whole begins to elevate the way in which it operates and improvements are made.

*As always, we note that we are not issuing an opinion that is legal in nature. The above information is general information only as it pertains to the Background Screening Agency Accreditation Program and is not legal advice, express or implied. Consultation with legal counsel is recommended in all matters of employment law.*