

Revision Date:	July 2019	Policy Type:	Public Service
Approval Level:	CEO	Distribution:	All Employees
Review Schedule:	5 Years (or as required)		

1. PURPOSE

Canada's Anti-Spam Legislation ("CASL") came into force on July 1, 2014. Markham Public Library Board (the "Library", or "MPL") is committed to complying with the requirements of the CASL. The purpose of this Policy (the "Policy") is to document how compliance will be accomplished and maintained.

2. SCOPE

This Policy applies to all Library employees.

3. DEFINITIONS

Canada's Anti-Spam Legislation, or "CASL" – Consists of the following Act and Regulations:

- a) *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, S.C. 2010, c. 23 (the "Act");*
- b) *Electronic Commerce Protection Regulations (CRTC), SOR/2012-36; and*
- c) *Electronic Commerce Protection Regulations (Industry Canada), SOR/2013-221*

Computer Program – Data representing instructions or statements that, when executed in a Computer System, causes the Computer System to perform a function.

Examples of Computer Programs include, but are not limited to:

- a) software;
- b) applications (apps);
- c) games;
- d) eBooks;
- e) any upgrades or updates to an existing Computer Program; and
- f) any other computer code that meets the above description.

Computer System – Any device, or a group of interconnected or related devices, one or more of which:

- a) Contains Computer Programs or other data, and
- b) Pursuant to Computer Programs,
 - performs logic and control, and

- may perform any other function

Examples of Computer System include, but are not limited to: a computer; a server; a hard drive; a mobile phone; a tablet.

Electronic Message, or “EM” – A message sent by electronic means to an Electronic Address, including, but not limited to messages sent:

- by email;
- by text message;
- by instant message;
- via a social media account.

For greater certainty, an EM does not include messages:

- sent via posted mail;
- sent via fax;
- communicated via a two-way voice conversation;
- communicated via voicemail to a telephone account; and/or
- posted or published on a website (but not sent to an Electronic Address).

Electronic Address – An address used in connection with the transmission of an EM to:

- an email account;
- an instant messaging account;
- a telephone account;
- a social media account; or
- any similar account.

Exemptions – The exemptions to the requirements of subsections 6(1) and/or 6(2) of the Act, as prescribed in CASL.

Express Consent – The explicit and/or expressed communication by a Person that the Person wishes to receive EMs from the Library.

Implied Consent – The existence of the requirements prescribed in Part 8. herein.

Person – An individual, partnership, corporation, organization, association, trustee, administrator, executor, liquidator of a succession, receiver or legal representative.

4. GENERAL

The Library CEO or designate is responsible for administering and enforcing this Policy. Compliance with this Policy is required by all Library directors, managers, supervisors, employees, volunteers, and any other Person who communicates on behalf of the Library.

Notwithstanding anything in this Policy, at the Library's sole and absolute discretion, the Library may rely on any one or more of the Exemptions. A determination as to when a situation would be subject to any of the Exemptions shall be made by the Library on a case-by-base basis.

At its sole and absolute discretion, the Library may at any time revise this Policy to ensure that it remains in compliance with CASL.

5. ELECTRONIC ADDRESSES

No Person shall collect an Electronic Address for the purposes of sending EMs to the Person who owns the Electronic Address on behalf of the Library, without having first obtained the consent of that person.

All the Electronic Addresses collected by or on behalf of the Library shall be entered, stored and managed by the Library in a centralized Customer Relationship Management database ("CRM"), which is connected to and/or managed by the Library's Integrated Library System ("ILS").

All individuals who obtain and/or collect Electronic Addresses on behalf of the Library must enter those Electronic Addresses into the CRM, in accordance with the Library's policies and procedures respecting collection of personal information.

6. ELECTRONIC MESSAGES

No EM shall be sent by or on behalf of the Library, in the course of carrying on the Library's activities, unless the recipient of the EM has provided his or her Express Consent or Implied Consent to receive EMs from the Library (as particularly prescribed in Parts 7. and 8. of this Policy).

EMs sent by or on behalf of the Library in the course of carrying on the Library's activities may only be sent to Electronic Addresses that have been entered into the CRM.

All EMs sent by or on behalf of the Library in the course of carrying on the Library's activities must include the following information:

- a) the Library's name and mailing address;
- b) the Library's email address and telephone number; and,
- c) the Library's Unsubscribe Mechanism, as prescribed below.

EMs sent between employees of the Library, and/or from employees of the Library to employees of other libraries, shall concern the activities of the Library.

If an employee of the Library sends an EM to another employee of the Library or to an employee of another Library, which promotes, markets, advertises or otherwise encourages participation in commercial activity of a Person other than the Library, the sending employee must:

- a) use his/her personal Electronic Address and not an Electronic Address owned by the Library to send the EM; and
- b) obtain the Express Consent of the recipient employee prior to sending the EM.

7. EXPRESS CONSENT

The Library shall endeavour to obtain Express Consent from all persons to whom it sends EMs, at all reasonable opportunities.

Express Consents provided to the Library shall be entered into the Library's CRM in accordance with the Library's procedures, and shall specify:

- a) the date and time the Express Consent was given;
- b) the types of EMs the Person has consented to; and
- c) the manner in which the Express Consent was given.

All requests for Express Consent made by or on behalf of the Library **in writing** (whether electronic or in hard copy format), must include the following:

- a) a request that the recipient consent to receive EMs from the Library;
- b) the purpose for which the consent is being sought (e.g., for receiving EMs; for installing a particular Computer Program);
- c) the Library's name and mailing address;
- d) the Library's email address and phone number; and
- e) a statement that consent may be withdrawn at any time.

Express Consent shall not be sought by or on behalf of the Library by sending an Electronic Message to an Electronic Address, unless the Library has Implied Consent from the Person to whom the Electronic Message is being sent.

All requests for Express Consent made in writing shall not include pre-checked boxes.

All requests for Express Consents made by or on behalf of the Library **orally** shall follow the following procedure:

- a) The individual requesting the consent shall disclose to the Person from whom the consent is being sought:
 - that the consent is being sought on behalf of the Library;
 - the purpose for which the consent is being sought (e.g. for receiving EMs; for installing a particular Computer Program);
 - the Library's mailing address;
 - the Library's email address and telephone number; and
 - that the Person may withdraw the consent at any time.
- b) ONLY email addresses authorized verbally or in writing by a Person shall be entered into the ILS.
- c) Details of the Express Consent will be noted in the customer's record in the ILS, including the purpose for which consent is being sought, the date consent is obtained and the initials of the staff member who obtained the consent.

Any individual who obtains Express Consent on behalf of the Library shall enter the Express Consent into the CRM within three (3) business days of receiving the Express Consent, or as soon as is reasonably possible, in accordance with the Library's procedures.

8. IMPLIED CONSENT

The Library has Implied Consent to send EMs to the following:

- a) Persons who are current, active cardholders of the Library;
- b) Persons who were cardholders of the Library but who ceased to be cardholders in the 24 months preceding the date of sending of the EM;

- c) Persons who entered into a financial transaction with the Library in the 24 months preceding the date of the sending of the EM;

9. UNSUBSCRIBE MECHANISM

All EMs sent by or on behalf of the Library in the course of carrying out Library activities shall include a mechanism by which the Person receiving the EMs may unsubscribe (i.e. opt out) from receiving electronic messages from the Library (the “Unsubscribe Mechanism”).

The Unsubscribe Mechanism shall be prominently displayed in the body of all EMs sent by or on behalf of the Library.

All requests to Unsubscribe shall be acted upon by the individual who receives the request or, if unable to personally respond, the request shall be communicated by the individual who receives the request to comments@markham.library.on.ca within 3 business days of the receipt of the unsubscribe request.

All requests to unsubscribe shall be entered into the Library’s CRM by the staff member who receives the request, or if unable, to comments@markham.library.on.ca, within 3 business days of being notified of the request, in accordance with the Library’s procedures.

No EMs shall be sent by or on behalf of the Library to any Person who made a request to Unsubscribe, 10 days after the request was made and thereafter, unless the Person provides his or her Express Consent to receive EMs from the Library, or unless the EM meets one of the Exemptions (to be determined by the Library on a case-by-case basis).

10. THIRD PARTIES

For the purposes of this section, the following terms have the following meaning:

“Third Party” – means a Person who is not a director, officer or employee of the Library, who sends EMs that promote, advertise, market, or otherwise encourage participation in the Library’s activities.

The Library requires that all Third Parties have Express Consent or Implied Consent to receive EMs from the Library, from the Persons to whom the EMs are sent, prior to the sending of the EMs.

The Library shall not be held liable for any and all EMs sent by Third Parties that are not sent in compliance with this Policy.

All Third Parties agree to defend, indemnify and hold harmless the Library and its directors, officers, employees, agents and trustees, from and against any and all complaints, claims, actions or demands resulting from, and/or arising out of, the Third Parties’ breach of this Policy, including, but not limited to, for any and all regulatory proceedings, warrants, preservation demands, disclosure requests, compliance notices, administrative monetary penalties, fines, damages, injunctive relief, legal fees, expert fees and disbursements.

At its sole and absolute discretion, the Library may, from time to time, enter into agreements and/or arrangements with Third Parties that may not necessarily be in compliance with this Policy, but which ensure the Library's compliance with CASL.

Notwithstanding anything in this Policy, at its sole and absolute discretion, the Library may rely on one or more of the Exemptions for EMs sent by Third Parties. A determination of whether a particular EM sent by a Third Party is subject to an Exemption will be made by the Library on a case-by-case basis.

11. COMPUTER PROGRAMS

In the course of conducting Library activities, no Person shall cause a Computer Program to be installed on a Computer System, unless that Person first obtains the Express Consent of the owner or authorized user of the Computer System to install the Computer Program, on behalf of the Library.

Notwithstanding section 34, there is no requirement to obtain Express Consent to install the following Computer Program on behalf of the Library:

- a) A cookie;
- b) HTML code;
- c) Java Script; and
- d) An operating system.

When seeking Express Consent to install a Computer Program on behalf of the Library, the Person seeking the consent shall disclose to the Person from whom consent is being sought, **clearly and simply**, the function and purpose of the Computer Program being installed.

For the purposes of this Part, the following terms have the following meaning:

"Special Functions": means a Computer Program that is intended to cause the following functions, contrary to the reasonable expectations of the user / owner of the Computer System:

- a) collecting personal information stored on the Computer System;
- b) interfering with the owner's or an authorized user's control of the Computer System;
- c) changing or interfering with settings, preferences or commands already installed or stored on the Computer System without the knowledge of the owner or an authorized user of the Computer System;
- d) changing or interfering with data that is stored on the Computer System in a manner that obstructs, interrupts or interferes with lawful access to or use of that data by the owner or an authorized user of the Computer System;
- e) causing the Computer System to communicate with another Computer System, or other device, without the authorization of the owner or authorized user of the Computer System;
- f) installing a Computer Program that may be activated by a third party without the knowledge of the owner or an authorized user of the Computer System.

If the Computer Program being installed on behalf of the Library is intended to perform a Special Function(s), the Person seeking consent on behalf of the Library, must, prominently,

clearly, simply, and separate and apart from any other requests for consent, describe the Special Function(s), including their nature and purpose and their impact on the operation of the Computer System.

12. COMPUTER / INTERNET CONNECTION

Any Person who uses:

- a) a Computer System owned, operated and/or controlled by the Library; and/or
- b) an Internet connection owned, controlled and/or provided by the Library (including any wireless connection), must carry out his or her activities in a manner that is compliant with CASL.

Any Person who contravenes this Part shall defend, indemnify and hold harmless the Library and its directors, officers, employees, agents and trustees, from and against any and all complaints, claims, actions or demands resulting from, and/or arising out of, that Person's actions, including, but not limited to, for any and all regulatory proceedings warrants, preservation demands, disclosure requests, compliance notices, administrative monetary penalties, fines, damages, injunctive relief, class actions, legal fees, expert fees and disbursements.

13. TRAINING

All Library employees, including directors, officers and volunteers, must receive mandatory training on this Policy (the "Training"), to be prepared, conducted and tracked by the Manager, Organizational Transformation. All new employees and volunteers shall be required to attend the Training, within 90 days of becoming an employee or a volunteer for the Library.

Refresher Training: a refresher Training shall be conducted every 48 months, for Board and staff.

14. AUDIT

Once every 12 months, the Library shall conduct an audit of its electronic communication practices, to ensure compliance with this Policy (the "Audit"). The Audit shall be conducted and managed by the Director, Administration.

Notwithstanding the above, at the Library's sole and absolute discretion, the Library may from time to time conduct an audit of its electronic communication practices to ensure compliance with this Policy (the "Random Audit").

In the event the Annual or Random Audit discloses discrepancies between this policy and the Library's communication practices, such discrepancies shall be addressed by the Library to ensure compliance with the Policy, as soon as is reasonably possible.

15. RESPONSIBILITIES

CEO / Directors shall:

- Ensure that they and their employees understand and comply with this Policy.

Managers / Supervisors shall:

- Ensure that they and their employees understand and comply with this Policy;
- Enforce this Policy.

Library Administration:

- Develop and distribute this Policy; and,
- Update this Policy per the Review Schedule.

Employees:

- Ensure compliance with this Policy and all related policies and legislation.