

RESPECTING FIRST NATIONS DATA SOVEREIGNTY IN RECORDS & INFORMATION MANAGEMENT

The First Nations Information Governance Centre

ABSTRACT

The article begins with an introduction to the First Nations Information Governance Centre (FNIGC) and their work. It then defines the concepts of First Nations Data Sovereignty and First Nations data before briefly outlining the First Nations Principles of OCAP®. The paper ends with a discussion of various ways Records and Information Management professionals are implicated in First Nations Data Sovereignty and how they may respect the principles of OCAP® in their work.

INTRODUCTION

Records and information management (RIM) is a key component of any organization's information governance system. For Canadian professionals managing these records, implementing best practices ensures the vitality of the information; but what about instances where these records and information belong to First Nations and not the institutions where they are currently housed? This paper will begin with an introduction of the First Nations Information Governance Centre (FNIGC) as well as outline First Nations' inherent rights to data sovereignty. It will then discuss the implications of the First Nations Principles of OCAP® in the work of records and information managers (RIM professionals). It will end with a call to action for RIM professionals to respect the principles of OCAP® and adopt practices that uphold First Nations data sovereignty.

WHO IS FNIGC?

The First Nations Information Governance Centre (FNIGC) is an incorporated, non-profit organization committed to producing evidence-based research and information that will contribute to First Nations in Canada achieving data sovereignty. FNIGC envisions that

every First Nation will achieve data sovereignty in alignment with its distinct worldview. Mandated by the Assembly of First Nations' Chiefs-in-Assembly (AFN Resolution #48, December 2009), we assert data sovereignty and support the development of information governance and management at the community level through regional and national partnerships. We adhere to free, prior, and informed consent, respect Nation-to-Nation relationships, and recognize the distinct customs of First Nations. Our work includes research and analysis of the technical elements of First Nations data sovereignty, like information management and data governance.

FIRST NATIONS DATA SOVEREIGNTY

DEFINING FIRST NATIONS DATA & INFORMATION

What First Nations consider to be their information has historically differed from the perspectives of the Canadian government and RIM professionals, including academic institutions, archives, libraries, museums, and repositories. First Nations assert that their data and information is more than just statistical numbers or historical records. Statistics, derived from surveys and other research, and historical records contain our stories, traditional knowledge, and intellectual property. They are precious resources to First Nations.

First Nations data and information can be defined as anything relating to the following three criteria:

- Information *about* First Nations people, like health, jobs, and housing,
- Information *from* First Nations, like languages, patterns, songs, dances, and
- Information *on* First Nations reserve and traditional lands, waters, resources, and the environment (FNIGC, 2020).

DEFINING FIRST NATIONS DATA SOVEREIGNTY

Data sovereignty is an element of self-determination and self-government (Kukutai, 2016). Access to informationⁱ about a Nation's citizens, lands, waters, economies, and natural resources is critical to good governance and sustainable development (United Nations, n.d., Office of the Privacy Commissioner, 2016). Without this information, governments are unable to implement effective policies and programs, or measure their success.

ⁱWe use the term Information here to refer to any First Nations data and information including, but not limited to, artifacts, records, historical documents, physical items, and statistical data.

First Nations, as sovereign nations, have rights to govern and protect their people, lands, territories, and resources. As such, First Nations have inherent, Constitutional, and Treaty rights over their information. Data sovereignty requires that the First Nations right to govern their data and information is upheld:

[T]he data governance rights of Indigenous nations apply regardless of where the data is held or by whom. This includes the right to the generation of the data that Indigenous peoples require to support nation rebuilding and governance... IDS (Indigenous data sovereignty) also comprises the entitlement to determine how Indigenous data is governed and stewarded (Raine et al., 2019).

First Nations exercise data sovereignty through the application of their own laws, policies, and processes (FNIGC, 2020). How First Nations choose to exercise their data sovereignty is up to them. First Nations traditional laws and protocols, the modern application of these laws, and the need to develop new laws, codes, protocols, policies, and programs will influence First Nations individual data governance regimes. That said, First Nations have adopted a common approach to what constitutes data sovereignty. The First Nations Principles of OCAP® were adopted by First Nations to forge the path toward the realization of First Nations data sovereignty.

The acronym OCAP® stands for the principles of Ownership, Control, Access, and Possession. These principles are individually and collectively the pillars of First Nations data sovereignty. The First Nations Principles of OCAP® are not new. In fact, they represent themes and concepts that have been advocated for and promoted by First Nations people for years. Over the past two decades the First Nations Principles of OCAP® have been successfully asserted by First Nations across Canada to protect their data and information. While there is a good degree of consensus surrounding OCAP®, it is important to remember that the principles are not a set of standards. Each First Nation may have a unique interpretation of the OCAP® principles. OCAP® is not a doctrine or a prescription: it respects the right of First Nations to make their own choices about their data and information (FNIGC, 2020).

OWNERSHIP

The principle of ownership speaks to proprietary and human rights of First Nations in their data and information. The ownership principle applies to information that is collected, utilized, and stored by the First Nation as well as information that is collected, utilized, stored, or taken by non-First Nations entities, such as government officials, archeologists, business professionals, or academic researchers. Rights to ownership in data and information are also connected to the human rights of Indigenous peoples to exercise self-

determination and self-government. These rights are confirmed in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) which has been adopted federally and provincially in BC. This Declaration also recognizes First Nations rights to their intellectual property, traditional knowledge, and traditional cultural expressions. These rights apply regardless of the form of the information or where it is held. Many Canadian institutions are unaware of these rights or lack understanding of how to respect them. The assertion of ownership supports the application of the remaining principles.

CONTROL

First Nations assert rights to govern their data and information, expressed in the principle of control. First Nations not only have information governance laws and protocols to govern information that must be respected, but also hold rights to make decisions about their information held by others. First Nations retain control of their information unless they have offered their free, prior, and informed consent to share, or allow others to use, publish, destroy, etc., their records and information. Unilateral decision-making by any non-First Nation institution about First Nations records and information in their custody is contrary to the principle of control.

ACCESS

The principle of access is asserted in two different ways. The first is that First Nations hold a right to access their information regardless of where it is held. The second is that First Nations assert the right to determine who has access to their information. First Nations are developing access policies within their Nation to govern access to information under their direct control. RIM professionals can respect this principle as it applies to accessing First Nations information held by third parties. This would involve working with First Nations to develop governance protocols. Again, unilateral decision-making by others that allows the use, sale, sharing, or publication of First Nations information without First Nations consent is contrary to this principle.

POSSESSION

First Nations assert the right to possession of their data and information. The principle of possession was added to ensure First Nations assertion of ownership, control, and access can be realized. This includes the physical possession of tangible items like masks, books, recordings, etc. It also includes possession of intangible items like data stored on computer servers which can be achieved where First Nations themselves are in the physical possession of the server. Others may hold First Nations information, but only in a position of data steward and with the consent of the First Nation.

OCAP® AND RIM

As discussed above, much of First Nations information exists within Canadian institutions rather than the Nations themselves. First Nations may not even be aware of records and information held by the various institutions. In many cases, First Nations did not freely consent to the creation, duplication, or use of those records or information. This may have serious implications for the organizations that hold and manage information that rightfully belong to First Nations.

First Nations assert their right to data sovereignty and the principles of OCAP®. RIM professionals must respect a First Nation's assertion of OCAP®, and actively work to uphold their rights. Suggestions are offered here to assist RIM professionals in understanding the implications of these rights on their work.

RESPECTING OWNERSHIP

RIM professionals have many opportunities to respect First Nations ownership of their information in their work. It begins with identifying any records or information they manage that might rightfully be defined as *owned* by a First Nation or First Nations collectively, as defined by First Nations in the *First Nations Data Sovereignty* section of this paper. Identifying First Nations information and informing the respective Nation of its location is a necessary step for any RIM professional or institution committed to respecting First Nations data sovereignty.

RIM professionals can also respect First Nations data sovereignty by advocating for organizational procedures and technology that allows First Nations records and information to be easily identified. This may include the adoption of metadata that categorize information by the territory it relates to or the Nation from which it was extracted. It could also include the adoption of policies and practices that support knowledge sharing with First Nations whose information is implicated and encourage building relationships with said Nations.

First Nations are the rightful owners of their records and information. As such, institutions holding and RIM professionals managing First Nations information without their consent must work to return said information to their respective Nation. Complete repatriation of records and information to the rightful owners of said information is not only a positive step towards true reconciliation, but also abides by First Nations inherent, Constitutional, and Treaty rights to data sovereignty. Alternatively, First Nations consent to continue holding their materials is required.

RESPECTING CONTROL

The assertion of *de jure* control of First Nations data and information extends to situations where it is being held by a third party, like an archive, library, or repository. To appropriately respect First Nations rights and assertion of the principle of control, these institutions must implement policies or agreements that support First Nations governance of their records and information. This might include the creation of new decision-making processes that include First Nations rights holders or agreements to steward the materials as dictated by the First Nations.

RESPECTING ACCESS

RIM professionals can respect the principle of access by facilitating First Nations access to their data and limiting access by others where the First Nations have not otherwise expressed their free, prior, and informed consent. This must be respected whenever a First Nation actively asserts their rights to access their information, but can also be preemptively respected by adopting policies, practices, and technologies that allow for First Nations to maintain access to their information. An example of this might be creating a portal for First Nations rightsholders to access their information. This could be done through a secure online connection. In cases where the information is not or cannot be digitized, co-developed policies and procedures outlining access protocols should be negotiated between First Nations and the institution.

First Nations also maintain the right to restrict access to their data and information. This may include only authorizing partial access to the data holder and third parties as well as rescinding previous authorizations for access at any time. RIM professionals must seek consent from the First Nation to determine who from the Nation, the RIM institution, and, potentially, external parties can access said information and for what purposes. These requirements can be formalized in policies, procedures, and access agreements between a First Nation and the institution holding their information.

RESPECTING POSSESSION

First Nations assert a right to possess their information, which includes the physical possession of tangible artefacts and records, as well as the jurisdictional possession of intangible information like digitized records. Institutions and individuals wanting to respect First Nations rights to data sovereignty, are encouraged to advocate for and implement policies that honor any First Nations assertion of possession. Ideally, First Nations' rights to remove their information from the institution holding them should be respected by implementing procedures that a First Nation could trigger at any time.

There may be situations where a First Nation is interested in asserting their right of possession by having the institution continue to hold their information. In this situation, the institution would be acting as a data steward and would owe a duty to the First Nation to act under their direction. The institution would only be responsible for the organization, storage, and maintenance of the information. Any use, access, analysis, publication, etc., of the information would be under the direction of the First Nation. Legal contracts can formalize the roles and responsibility of each party in such situations as well as inform the processes for access and approvals.

A CALL TO ACTION

First Nations are each on a path towards self-determination and self-governance as we rebuild our nations following the colonial era. Locating First Nations records and information that have been integrated into colonial information systems is a vital component to First Nations governance and cultural reclamation. Records and information management professionals can help remove institutional barriers that stifle First Nations data sovereignty.

Practices and steps that RIM professionals and institutions can take to respect First Nations data sovereignty and the principles of OCAP® include:

- Identifying First Nations records and information within their systems
- Adopting organization practices and technology that easily identify and catalogue First Nations records and information
- Building relationships with local First Nations whose information is being held in non-First Nations institutions
- Recognizing First Nations authority by co-developing governance policies and protocols
- Advocating for funding of the development First Nations-led RIM practices and standards
- Respecting First Nations ownership and rights to repatriate their records and information
- Co-creating policies and procedures with First Nations that respect the principles of OCAP®

So much of First Nation records and information have been removed from First Nations communities and are held by non-First Nations governments and institutions. These records and information are not only vital to good governance and self-determination but also carry our stories, traditional knowledge, and history. As custodians, and not owners, of First Nations information, RIM institutions and professionals owe First Nations a duty to protect our interests and honor our rights in these records and information. This paper has outlined several steps that need to be taken to properly respect First Nations data sovereignty and

the principles of OCAP[®], including dismantling practices that have been developed without First Nations knowledge, consent, or oversight. We ask you to reflect on what you as a RIM professional will do to help.

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