

Guidelines for Licensed Premises:



Collecting, Using and Disclosing Personal Information of Patrons



Office of the
Information and Privacy
Commissioner of Alberta



AGLC
Alberta Gaming and
Liquor Commission

Bars and Nightclubs:

Collecting Personal Information At a Glance

The *Gaming and Liquor Act* allows licensed premises to collect limited personal information from patrons. Should a licensee use scanning technology to collect a patron's name, age and photograph, the technology must be programmed to only collect this limited, specific information. Otherwise, it is against the law to scan or photocopy the entire face of a patron's driver's licence or other identification as a condition of allowing them to enter the licensed premises: *Personal Information Protection Act* (PIPA).

A licensee may examine identification to confirm the **age of a patron**: *Gaming and Liquor Act*.

Under the *Gaming and Liquor Act*, a licensee may collect a **patron's name, photograph and age**.

A licensee is not required to collect this information. It is discretionary.

A licensee can deny a person entry if they refuse to produce identification verifying their name and age, or if a person refuses to allow a photograph to be taken.

If a licensee does collect personal information, it may only be used to decide whether to let a person into the premises. Use for any other purpose would have to be reasonable and would require consent from the patron.

A licensee can disclose the information they collect:

1. To other licensees, if the licensee reasonably believes a patron has broken a law,
2. To other licensees, if a patron is a threat to others
3. To a police officer, upon request.

Other licensees may then use the information to decide whether or not to allow a specific person onto their premises, and for no other purpose.

A licensee must tell patrons why the information is being collected. This can be done using a sign.

Once it is collected, the licensee is responsible for protecting the information against loss, theft, or improper use. Access to the information should be restricted to those who need to know.

A licensee must give a person access to the information it has collected about that person. If someone asks, they should be directed to an employee of the licensee who can assist them.

For further information see Guidelines for Licensed Premises:

Collecting, Using and Disclosing Personal Information of Patrons at www.oipc.ab.ca or contact the Office of the Information and Privacy Commissioner at 403-297-2728 or 1-888-878-4044.

Guidelines for Licensed Premises: Collecting, Using and Disclosing Personal Information of Patrons

These guidelines were prepared to help licensees comply with the *Personal Information Protection Act* (PIPA) and the *Gaming and Liquor Act* (GLA). The guidelines are an administrative tool intended to assist in understanding the legislation. The guidelines are not intended as, nor are they a substitute for, legal advice. For the exact wording and interpretation of PIPA or the GLA, please read the legislation in its entirety. These guidelines are not binding on the Office of the Information and Privacy Commissioner of Alberta (OIPC).

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Introduction

On November 1, 2009 the *Gaming and Liquor Act* (GLA) was amended. The amendments include new provisions authorizing licensees to collect specific limited personal information about patrons, and, in certain circumstances, to disclose this information to other licensees and the police.

Provincially-regulated licensees operating in Alberta are private sector businesses that are subject to the *Personal Information Protection Act* (PIPA). PIPA is a law that provides rules for how private sector businesses collect, use, disclose, and generally handle personal information.

These guidelines are intended to help licensees understand their obligations under PIPA when they collect, use and/ or disclose personal information of patrons. The guidelines are set out as Frequently Asked Questions (FAQs) to make them easy to use. They will be updated regularly as we hear from licensees about their experiences complying with the GLA.

1. What is personal information?

“Personal information” is defined in PIPA to mean “information about an identifiable individual.” This is a very broad definition, and includes, for example, a person’s name, along with any other information about that person.

The limited information that a licensee is authorized to collect and disclose under the GLA – a patron’s name, photograph, and age – qualifies as personal information for purposes of PIPA. Information that may not be associated with the name of an individual, but that can be used to identify someone (such as a description of an incident), is personal information under PIPA.

2. What personal information can I collect about patrons?

First, as before, a licensee can demand identification to determine whether or not someone is of legal age to be on the premises. While examining ID is a collection, it is authorized by the GLA. A licensee is not required to record information to verify age.

The general rule under PIPA is that an organization can only collect personal information for reasonable purposes and only to the extent reasonable to meet those purposes. This means an organization cannot collect more personal information than is reasonably required to meet specific purposes.

Some licensees in the province have been collecting personal information of patrons by scanning or sometimes “swiping” driver’s licences. Collecting information in this way can result in the collection of more personal information than the licensee reasonably requires. This is because a driver’s licence includes a significant amount of personal information about the licence holder. For example, in addition to the driver’s licence number, the front of an Alberta driver’s licence includes all of the following information about the licence holder:

- Class number
- Driving conditions
- Expiry date
- Name
- Address
- Sex
- Date of birth
- Issue date
- Photograph
- Signature

The GLA now authorizes licensees to collect specific limited patron information: name, age and photograph. The GLA does not authorize a licensee to collect a patron’s date of birth.

Licensees are authorized, but not required, to collect name, age and photograph from patrons “before allowing a person to enter licensed premises.” This is for the purpose of deciding whether or not to allow a particular person to enter the establishment.

Because collection of this specific information is authorized by law for this purpose, the purpose itself, and the extent of collection, is reasonable under PIPA.

Licensees should remember, however, that “collection” could include merely examining a patron’s identification (e.g. a driver’s licence), or recording specific information about a patron, either in written or electronic format. When recording information, PIPA requires that licensees make a reasonable effort to ensure the information is accurate.

Licensees will have to decide whether or not they will collect any personal information of patrons, and, if so, whether to collect it by examining identification only, or whether the information will be recorded. If licensees intend to record patron personal information as specified in the GLA, they will also have to decide whether they will record it in written or electronic form, or both.¹

¹ A licensee’s responsibilities under PIPA will vary depending on whether personal information of patrons is collected or recorded, and whether or not it is in written or electronic form. More information about these responsibilities is provided in these Guidelines, and is also available on the OIPC website at www.oipc.ab.ca.

3. How do I decide whether or in what circumstances to collect personal information about patrons?

It is important to remember that the GLA does not require the collection of patron personal information; instead, licensees need to decide for themselves whether or not they will collect this information.

The following are some questions licensees should consider in making a decision about whether or not to collect personal information of patrons:

- **What business issue or problem am I trying to address by collecting the information?**

For example, have there been repeated incidents of violence or otherwise unacceptable behavior? Does the licensee want to be able to identify problem patrons so that they can be refused entry in the future?

If a licensee has not had any problems with violence or otherwise unacceptable behavior, it does not make sense to collect personal information from patrons.

- **Will collecting personal information of patrons be effective in addressing the issue or problem?**

Licensees should think carefully about exactly how they will use personal information of patrons to solve their specific business issue or problem. Will collecting patron names, ages, and photographs help to address problems of violence or unacceptable behavior? How?

- **Are there less privacy-intrusive alternatives that might be as effective?**

In some cases, it might be as effective, or more effective, for licensees to consider other measures to address issues of violence or unacceptable behavior, such as hiring staff that are specially trained to handle difficult situations, or installing surveillance cameras at the entrance to the premises.²

The GLA contemplates collection of patron personal information in two ways. First, it authorizes licensees to generally collect personal information (name, age and photograph) before allowing a person to enter premises. This could mean a licensee will collect personal information from everyone who wishes to enter the premises.

Second, the GLA also authorizes licensees to collect a patron's name, age and photograph from another licensee who reasonably believes that the patron has engaged in certain unacceptable behavior.

² For more information on alternatives to collecting patron personal information, see the summary report of the Alberta Roundtable on Violence In and Around Licensed Premises: Exploring the Issues, available on the Alberta Gaming and Liquor Commission website at www.aglc.ca/responsibleliquorservice/roundtable.asp. For more information on privacy risks associated with video surveillance, see Guidelines for Overt Video Surveillance in the Private Sector, produced by this Office in conjunction with the Office of the Information and Privacy Commissioner for British Columbia and the Office of the Privacy Commissioner of Canada, and available on our website at www.oipc.ab.ca

Licensees need to first decide whether or not to collect any personal information of patrons, and then consider whether or not to collect information from every patron who wishes to enter the premises, and/ or personal information that is provided by other licensees.

There are a number of scenarios that a licensee might want to consider. Here are some possibilities...

Scenario 1:

A licensee does not want to allow entry to patrons who have been identified by other licensees as “problems”. To do this, the licensee decides to collect and retain a list of patron names, ages and photographs from other licensees authorized to disclose the information (see FAQ #7 for disclosure of patron personal information). When patrons show up at the door seeking to enter the premises, the licensee’s staff members are instructed to examine identification. If someone’s name, age and photograph match the information provided by another licensee, then the licensee can decide whether or not to allow that person to enter the establishment.

In this scenario, the licensee only retains personal information of patrons who have been identified as “problems” at other licensed premises. No information is recorded or retained about individuals who show up at the door seeking to enter the premises. The licensee has limited the personal information it collects about its patrons.

Scenario 2:

Over a six month period, a licensee has experienced a number of incidents of unacceptable behavior, usually involving the same patrons. As a result, the licensee collects the name and photograph of each of these “problem patrons.” The licensee’s staff members who are responsible for monitoring entry to the premises are given the names and photographs of these patrons, and are instructed not to allow them to enter the premises.

In this scenario, the licensee only retains personal information of patrons who have been identified as “problems” based on their behavior in the establishment. No information is recorded or retained about patrons who show up at the door if they have not been involved in any previous incidents.

Scenario 3:

A licensee is concerned with the number of incidents of unacceptable behavior on the premises, and feels this has generally resulted in an unsafe atmosphere. As a result, the licensee decides to record the name, age and photograph of everyone who enters

the premises; this information is destroyed within 24 hours if no incidents occur. However, if a patron engages in unacceptable behavior, that patron's personal information is retained by the licensee for six months. If the patron seeks to enter the premises within that six month period, the licensee's staff members are instructed to refuse to allow entry. After six months, the licensee destroys the patron's personal information in a secure manner, and the patron is free to enter the establishment.

The licensee also provides the names, ages and photographs of "problem" patrons to other licensees so that the other licensees can decide whether or not to let the patron enter their establishments. Some of these licensees will retain the information for six months; others for one year.

In this scenario, the licensee collects and records personal information of all patrons; however, most of the information is destroyed as soon as possible because the licensee has no business or legal purpose to keep it any longer. The licensee only retains the personal information of patrons who were actually involved in an incident, and then only for six months. The licensee has also given this personal information to other licensees, so that they can decide whether or not to allow the patron to enter their premises. Each of the other licensees retains the information for a different period of time, according to their own legal and business purposes.

Ultimately, licensees will need to make some decisions, including:

- whether or not to collect any personal information of patrons,
- whether or not to collect information from patrons at the door and/ or from other licensees,
- whether it will be sufficient to merely examine identification, or will personal information be recorded?
- if the information will be recorded, will it be stored in written or electronic form?
- will the licensee disclose patron personal information to other licensees and, if so, which ones? How will the information be shared (written lists, electronic transfer of information, fax, e-mail, etc.)?

4. Do I need to get consent to collect personal information from patrons?

As a general rule, PIPA requires organizations to obtain an individual's consent to collect personal information. However, there are a number of exceptions to consent set out in the Act. For example, an organization does not require consent to collect personal information if the collection is authorized or required by law.

The GLA is a law that authorizes a licensee to collect a patron's name, age and photograph for the purpose of deciding whether or not to allow a patron to enter premises. Therefore, consent is not required to collect this personal information for this purpose. The reality is that a licensee who requests this information from patrons at the door will only be able to collect it if the patron wishes to provide it (that is, voluntarily provides the information to the licensee). The provisions in GLA also authorize a licensee to collect the names, ages and photographs of "problem patrons" from other licensees, without consent.

Remember, however, that the GLA limits the personal information that a licensee can collect without consent to name, age and photograph. Collecting any additional personal information will require consent, and the collection must also be reasonably required by the licensee, for a reasonable purpose.

5. Can I refuse entry to someone who refuses to give me their name and age, or who refuses to let me take a photograph?

PIPA prohibits an organization from requiring an individual to consent to the collection, use or disclosure of personal information beyond what is necessary to provide a product or service.

Because the GLA is a law that authorizes licensees to collect specific personal information in order to decide whether or not to allow someone to enter premises, licensees can choose to make this a necessary condition of entry. That is, a licensee can refuse to allow a person to enter the premises if that person refuses to provide their name, age and photograph.

A licensee that requires some, but not all, patrons to provide personal information, or that offers some, but not all, patrons alternatives to providing the information, should consider whether or not the information is really "necessary."

Instead of insisting on collecting the information from all patrons as a necessary condition of entry, licensees are encouraged to consider what alternatives might be made available to patrons who do not wish to provide this information.

6. What can I use patron personal information for?

As already stated, the GLA authorizes a licensee to collect a patron's name, age and photograph, either directly from the patron or from another licensee, for the purpose of deciding whether or not to allow a patron to enter premises. However, if a licensee wants to use a patron's name, age or photograph for any purpose other than making a decision about allowing the patron to enter the premises,

consent for this new purpose will generally be required. The new purpose must also be reasonable.

Licensees must also notify patrons, at the time their personal information is collected directly from them, of all the purposes for which their personal information is collected. (See FAQ #8 for more information about notification requirements under PIPA). This means that licensees should carefully consider and identify all purposes for which they want to collect and use patron personal information, so that they can be sure to inform patrons.

Licensees should also be aware that they cannot require individuals to consent to the collection and use of their personal information for any purposes other than to make a decision about allowing a patron to enter the premises.

7. What personal information can I disclose? To whom can I disclose it? Do I need consent?

PIPA provides rules for how organizations disclose personal information. Disclosure refers to sharing personal information with another entity, such as another licensee, or the police.

Consent is generally required for disclosure, unless disclosure without consent is otherwise authorized. Under PIPA, an organization can disclose personal information without consent when another law authorizes or requires the disclosure.

The GLA provides licensees with authority to disclose personal information in two specific situations.

First, a licensee who has personal knowledge, or reasonably believes, that a patron has engaged in certain activities during the preceding year, is authorized to disclose the patron's name, age and photograph to another licensee. These activities include those that:

- are contrary to any municipal bylaw or any provincial or federal Act or regulation,
- are detrimental to the orderly operation of the premises,
- may be injurious to the health or safety of people in the premises, or
- are prohibited under the licence or by the regulations.

A licensee who collects a patron's name, age and photograph from another licensee is authorized to use the information to determine whether or not to allow the patron to enter the premises.

These provisions will likely result in the creation of an "unwelcome patrons" list. The activities for which a person can be denied entry could be extremely broad: ranging from criminal offences to bad behavior, to being rude. It is suggested that for this list to be of any

use, judgment must be exercised in placing people on it.

In connection with this, people have the right to request that errors or omissions in their personal information be corrected pursuant to section 25 of PIPA. It seems reasonable to expect that a person who was denied entry because he was rude or obnoxious would be more likely to ask for a correction than someone who was denied entry for a serious activity (for more information on requests to correct personal information, see FAQ #11).

Second, the GLA requires a licensee to disclose a patron's name, age and photograph to a police officer as soon as possible after receiving a request from the officer.

Because the GLA authorizes disclosure of limited information to another licensee, and requires disclosure to a police officer upon request, consent is not required for either of these disclosures.

Nonetheless, licensees who intend to disclose patron personal information in these circumstances should consider how the disclosure will be made. Information can be shared in a variety of ways (by fax, e-mail, telephone, electronic download, etc.), and each method of transmission carries with it certain risks to privacy. FAQ #9 provides more information about a licensee's obligation to safeguard personal information from privacy and security risks, including those associated with transmitting, or sharing, personal information.

8. Patrons are asking why I'm collecting their personal information. Do I have to explain?

PIPA requires that organizations tell people, before or at the time personal information is collected, of the purposes for which the information is being collected. This "notice" must also include the name of someone who can answer any questions about the collection.

Licensees should ensure there is signage with the required information posted where it will be clearly visible to patrons at the time they are asked to provide their personal information.

It will also be important to make sure that all staff members who are collecting name, age and photograph from patrons have a clear understanding of why they are doing so. It is likely patrons will have questions about the licensee's authority to collect the information, how the information will be used, and whether or not it will be disclosed to other licensees and for what purposes. They will also likely want to know how to have their personal information removed or destroyed, and how to have it changed, particularly if they are identified as a "problem" patron.

Staff should be prepared and able to respond to these questions, and should be able to refer patrons to someone else who can provide even more information if necessary. This means that licensees need to make sure that staff members receive comprehensive and regular privacy training, both at the time of hire, and throughout their employment with the licensee.

Licensees should also develop policies that explain their purposes for collecting, using and disclosing patron personal information. This is a legal requirement under PIPA, and clear, comprehensive policies are a useful tool for making sure that both staff members and patrons understand the licensee's personal information handling practices.

9. Now I've collected personal information from my patrons, what do I have to do to protect it?

PIPA requires that organizations make reasonable security arrangements to protect personal information from such risks as unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction.

Reasonable security arrangements will include administrative, technical and physical controls.

For licensees, this means that only limited, authorized employees who need access to patron information to do their jobs, should have access (e.g. security staff, door staff). Employees must be trained to understand their obligations under law to protect privacy (for example, employees need to know that patron information can only be used for the purpose for which it was collected). If patron information is collected or stored in electronic form, then technical controls must be in place to ensure that only those employees with a need-to-know can access it. Personal information, whether in electronic or hard copy paper format must be stored and destroyed in a secure manner.

As mentioned elsewhere in these guidelines, licensees should pay particular attention to the privacy risks associated with sharing personal information, whether in written format or electronically, by fax or e-mail.

Establishing and implementing reasonable safeguards will vary depending on what and how much personal information licensees collect, and the format in which it is retained and disclosed. For more information on an organization's general duty under PIPA to safeguard personal information, see our Office's publication PIPA Advisory #8: Implementing Reasonable Safeguards.³

³ Available on the OIPC website at www.oipc.ab.ca

10. Patrons are asking to see what personal information I have about them, and are asking for copies of it. Do I have to respond to these requests?

PIPA gives individuals a right to access personal information about themselves, subject only to limited and specific exceptions set out in the Act. Individuals can also ask about the purposes for which their personal information has been used, and the names of any individuals or organizations to whom their personal information has been disclosed.

This means that if a patron wants to know what information a licensee has collected about him or her, how it has been used, and to whom it has been disclosed, the licensee is required to respond. The “rules” licensees must follow in responding to a request for access to personal information are set out in PIPA. Generally, the rules state:⁴

- a. Requests for access must be made in writing to the licensee.
(A licensee can nonetheless decide that it will respond to a verbal or e-mail request for access. However, a licensee may decide to only accept written requests for access.)
- b. Licensees must respond to a request for access within 45 days.
- c. The licensee’s response must advise the individual whether or not he or she will receive all or part of the personal information requested, and when it will be provided. If access is refused, the licensee must tell the person the reasons for the refusal and the provision under PIPA that authorizes the refusal.

The licensee’s response must also include the name of someone who can answer any questions the person might have about the refusal, and must tell the person that he or she can contact the Office of the Information and Privacy Commissioner to request a review of the licensee’s response.

- d. Licensees have a legal duty to assist people requesting access to personal information, and to respond accurately and completely. Licensees must create a record from information that is in electronic form, where reasonable to do so, and must explain any codes or abbreviations that may have been used. Individuals can request access to original information, or may request a copy be made available to them.
- e. Licensees may charge a reasonable fee to provide access to personal information. Fees must be reasonable, and are not intended to be a barrier to access.
- f. There are some circumstances in which a licensee can or must refuse to provide access to patron personal information. These

⁴The information provided in these Guidelines is a summary of some of an organization’s duties and obligations under PIPA. Licensees should refer directly to the legislation, however, when responding to a request for access. In addition, there are numerous resources available on the OIPC website, www.oipc.ab.ca, to assist licensees in responding to requests for access to personal information. See PIPA Advisories #2-7.

exceptions to access are set out in PIPA. For example, a licensee can, or must in some cases, refuse to provide access to personal information:

- i. collected for an investigation or legal proceeding,
- ii. protected by legal privilege,
- iii. if disclosure could reasonably be expected to threaten the life or security of another person,
- iv. if the information would reveal personal information about another individual,
- v. if the information would reveal the identity of an individual who has in confidence provided an opinion about another individual and the opinion-giver does not consent to disclosure of his or her identity.⁵

An individual who is not satisfied with a licensee's response to a request for access to personal information can ask the Information and Privacy Commissioner to review the licensee's response.

11. Do I have to correct the personal information I collect?

PIPA allows individuals to request that organizations correct personal information about them.

Licensees may receive requests from individuals who have been added to a list of "problem patrons" because of their behavior. A patron who has been added to such a list because of rude or obnoxious behavior is probably more likely to request that this information be corrected than someone who is on the list for a more serious activity.

A request for correction must be made in writing to a licensee, although a licensee may decide it will respond to a verbal or e-mail request for correction. The "rules" licensees must follow in responding to a request to correct personal information are set out in PIPA. Generally, the rules require that a licensee who receives a request for correction must:⁶

- a. correct the information as soon as reasonably possible, and
- b. if the information was disclosed to other organizations (e.g. other licensees), the licensee must send a notification containing the corrected information to each of the other organizations.

Licensees receiving such a notice must then correct the personal information as well.

If the licensee decides not to make the correction, it must still annotate the personal information with the correction that was

⁵ These are just some of the exceptions to access that are set out in PIPA. For a complete list of exceptions, licensees should consult sections 24(2) and 24(3) of PIPA.

⁶ The information provided in these Guidelines is a summary of some of an organization's duties and obligations under PIPA. Licensees should refer directly to the legislation, however, when responding to a request to correct personal information.

requested but not made. This means attaching a note to a written record explaining the request for correction, or noting in an electronic database that a request to correct the information was made.

12. How long can I keep personal information about my patrons?

PIPA authorizes organizations to retain personal information for as long as is reasonable for legal or business purposes. When those purposes are no longer relevant, the information should be securely destroyed.

With respect to personal information of patrons, licensees should carefully consider how long they need to keep the information. Remember, there are risks associated with retaining personal information longer than it is reasonably required. The information must be securely safeguarded for as long as it is in the custody or control of the licensee, and that means locking it up, and protecting it from unauthorized access, etc. If a patron wants access to his or her personal information two or three years after it was collected, and the licensee still has the information, then the licensee is required to respond to the request for access according to the provisions set out in PIPA.

When establishing a reasonable period of time to retain personal information, licensees should consider again the purposes for which the information was collected. Retention periods will vary depending on the information and how it was used. For example, if the licensee collected the name, age and photograph of every patron who entered the premises on a particular Saturday night, and there were no incidents of violence or unacceptable behavior that night, then the licensee likely has no reasonable business purpose to retain the information. However, if the licensee maintains a list of problem patrons who will be denied entry to the premises in the future, then this information will need to be retained for a longer period of time in order to use it the next time the patron tries to enter the premises. Licensees are strongly encouraged to consider how long they will retain such lists of problem patrons. It will not be reasonable to retain this information in perpetuity. Consider what a reasonable retention period will be, document it in a written retention schedule, and implement the schedule by destroying personal information when the retention period is up. Personal information must be destroyed in a secure manner (shred paper records; permanently delete electronic records).

13. Do I have to install an electronic system to collect and store patron personal information?

No. Neither the GLA nor PIPA require licensees to purchase an electronic system to collect and store patron personal information. If a licensee decides to record or store patron personal information, the information can be recorded and stored in either hard copy written format, or electronically.

If a licensee decides to install an electronic system, the licensee must carefully assess the system to ensure it is designed and implemented to be compliant with both the GLA and PIPA. Among other things, the system should:

- limit the personal information that is collected and stored to what is authorized under the GLA and required by the licensee (see FAQ #2),
- be designed so that the licensee will be able to respond to requests for access to personal information,
- be secure, employing technical controls to limit access to only authorized employees of the licensee, including audit capabilities, ensuring secure transmission of personal information, and incorporating other safeguards as reasonably required,
- enable the destruction of personal information once established retention periods are up.

In addition, if a licensee enters into a relationship with an electronic system provider such that the system provider has custody or control of the licensee's patron personal information (for example, the personal information is stored on servers that are maintained by the system provider), then, for purposes of PIPA, the licensee is responsible to ensure that the system provider complies with PIPA. The licensee should discharge this responsibility by ensuring that privacy and security provisions, including audit capability, are built into a written agreement with the system provider.⁷

⁷ For more information about security in contracting, see Model Contract Language, produced by Service Alberta, Access and Privacy Branch, and available online at <http://pipa.alberta.ca/index.cfm?page=resources/ModelContract.html>

14. I have more questions. Who can I call? Where can I get additional information?

Licensees are encouraged to contact the Office of the Information and Privacy Commissioner (OIPC) of Alberta and consult the OIPC website for more information about complying with PIPA.

Office of the Information and Privacy Commissioner of Alberta

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