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# FOIP: A Guide

Revised November 2006  
(updated to reflect A.R. 186/2008)

**ISBN 0-7785-3699-8**

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# Freedom of Information and Protection of Privacy A Guide

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## INTRODUCTION

This Guide provides an overview of Alberta's *Freedom of Information and Protection of Privacy Act* and the regulation made under the Act (also referred to as the FOIP Act and FOIP Regulation).

The FOIP Act was introduced in the Alberta Legislature in the spring of 1994, following an extensive public consultation process by an All-Party Panel. The Act, which reflected the recommendations of the All-Party Panel and the input of Albertans, is seen as the cornerstone of an open, accessible and accountable government for the people of Alberta.

It was proclaimed in force on October 1, 1995, for public bodies such as government departments, agencies, boards, commissions and other organizations designated in the FOIP Regulation.

Extension of the Act to include local public bodies, such as school boards, health authorities, post-secondary educational institutions and municipalities, began with school boards in September 1998 and concluded with local governments such as municipalities in October 1999.

The Act was amended in 1999 in response to a review by a Select Special Committee of the Legislative Assembly. A second review by a Select Special Committee was completed in 2002 and the Act was subsequently amended in May 2003.

The definitions of the terms “public body” and “local public body” are found in **section 1** of the Act. “Public body,” by definition, includes a local public

body. Where the term “public body” is used in this Guide, it is also meant to include a local public body.

This Guide is published by Access and Privacy on behalf of the Minister of Service Alberta. The Minister is responsible for the overall administration of the FOIP legislation.

## TWO MAJOR PARTS TO THE ACT

There are two major parts to the Act:

- **Part 1**, which deals with access to records held by public bodies as defined under the Act; and
- **Part 2**, which deals with rules concerning protection of the privacy of personal information about individuals that is held by public bodies.

## FUNDAMENTAL PRINCIPLES

There are five fundamental principles upon which the Act is based. These are:

- 1) To allow a right of access to any person to the records in the custody or control of a public body, subject only to *limited* and *specific* exceptions;
- 2) To control the manner in which a public body may *collect* personal information from individuals; to control the *use* that a public body may make of that information; and to control the *disclosure* by a public body of that information;
- 3) To allow individuals a right of access to information about themselves which is held by a public body, subject only to *limited* and *specific* exceptions;

- 4) To allow individuals the right to *request corrections* to information about themselves held by a public body; and
- 5) To provide for *independent review* of decisions made by a public body under the legislation.

These principles provide the building blocks of the Act, as well as a point of reference for the examination of other provisions. These principles are set out in **section 2** of the Act.

### **WHAT THE ACT APPLIES TO**

The access provisions of the Act apply to all records in the custody or control of a public body, regardless of the medium in which the information is recorded or stored.

The term “record” is defined in **section 1 (q)** of the Act and includes notes, images, audiovisual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner.

Software or any other mechanism that produces records is not covered by the legislation.

### **WHAT THE ACT DOES NOT APPLY TO**

The Act does not apply to a limited number of records specified within the legislation. It does not apply to records that are available outside the Act, such as records based on information in a registry, court records, and certain records of judges and persons exercising similar powers, including their personal notes and draft decisions.

Other examples of excluded records are teaching materials produced within post-secondary educational bodies, as well as research information of their employees; questions that are to be used in an examination or test; published works collected by libraries; the personal and constituency records of local elected officials; and the personal records of appointed or elected officials of local public bodies (**section 4**).

In addition to these specific exclusions, the FOIP Act allows for cases where another Act, or the FOIP Regulation, explicitly states that certain information is not subject to the FOIP Act. If the provision of another Act prevails over the FOIP Act in this way, a person cannot obtain access to the information in question under the FOIP Act and must rely on the access provisions established in the other Act.

One important change to the application of the FOIP Act came into effect in April 2001 when the *Health Information Act* (HIA) was proclaimed in force. HIA, and not the FOIP Act, applies to health information held by health care bodies, such as Regional Health Authorities.

### **WHAT IS MEANT BY CUSTODY OR CONTROL**

A record is in the *custody* of a public body if the public body has physical possession of the record.

A record is under the *control* of a public body when the public body has the authority to manage the record, including restricting, regulating and administering its use, disclosure or disposition.

Some indicators that a record may be under the control of a public body are that:

- the record was created by an officer, employee or member of the public body;
- the record was created by an outside consultant for the public body;
- the record is closely integrated with the records of the public body;
- the content of the record relates to the public body's mandate and functions;
- the record is specified in a contract as being under the control of a public body; or
- a contract permits the public body to inspect, review or copy records produced, received or acquired by a contractor as a result of a contract.

The most common situation where a public body may have control of a record is in the case of contracted services. The record may be created by, and in the possession of the contractor, but the public body has set out some rights of access in the contract.

Public bodies continue to have obligations under the FOIP Act when services are delivered through contractors. Where a contractor provides services for a public body, records relating to that service are under the control of the public body unless the contract stipulates otherwise.

**Public bodies should specifically and clearly indicate through provisions in contracts or agreements the records over which they will have control.**

## EXISTING INFORMATION PRACTICES

Although the Act sets out a single process for accessing records of a public body, it does not replace existing practices or limit alternative procedures for providing access to information of a public body (provided that these conform to the Act's rules on collection, use and disclosure of personal information). Rather, the Act complements existing practices by establishing a procedure for providing access where none existed before.

The Act does not affect access to records deposited in the Provincial Archives of Alberta or the archives of a public body that were unrestricted before the Act came into force. Nor does it prohibit the transfer, storage or destruction of any record in accordance with any other enactment of Alberta or Canada or with a bylaw or resolution of a local public body, except in some circumstances where personal information is concerned.

In general, the Act requires public bodies to retain personal information for at least one year after the information has been used to make a decision (**section 35(b)**).

The Act does not limit the information otherwise available by law to a party to legal proceedings and does not affect the power of any court or tribunal in Canada to compel a witness to testify or to compel the production of documents (**section 3**).

The Act encourages public bodies to designate categories of records that can be made available without a FOIP request (**section 88**). Records in these categories can be made available either

without charge or under special fee structures established by the public body.

These forms of routine release of information will often prevent the need for the more complex task of processing of FOIP requests.

In addition, public bodies must allow the inspection of manuals, handbooks or other guidelines used by their officials and employees in decision-making processes affecting the public (**section 89**).

## **PUBLIC BODIES COVERED BY THE ACT**

The Act applies to government departments, as well as agencies, boards, commissions, corporations, offices and other bodies designated in the FOIP Regulation.

The Act was extended to the school and health sectors in September and October 1998, and to post-secondary institutions and local government bodies in September and October 1999 respectively.

These local public bodies include, for example:

- local governments, such as counties, cities, towns, villages and municipalities;
- police services and commissions;
- local school boards;
- Regional Health Authorities; and
- universities, public colleges and technical institutes.

For a complete list of the types of bodies included, see the definitions of:

- educational body (**section 1(d)**);
- health care body (**section 1(g)**); and
- local government body (**section 1(i)**).

For a detailed listing of the public bodies subject to the FOIP Act and their contacts, see the FOIP Web site.

## **OBTAINING ACCESS TO RECORDS**

The first fundamental principle of the Act concerns access to records of a public body.

Anyone may request access to a record. To obtain access to a record the applicant must make a written request to the public body that he or she believes has custody or control of it (**section 6(1)**).

The most effective way of identifying the government department, agency, board or commission that is likely to have the information sought is through a search of the Government of Alberta Website ([alberta.ca](http://alberta.ca)).

The FOIP Web site maintained by Access and Privacy includes a directory of FOIP Coordinators for all public bodies ([foip.alberta.ca](http://foip.alberta.ca)).

All public bodies that are subject to the Act are responsible for producing a directory that includes a listing of their personal information banks (**section 87.1**). They should be contacted directly for assistance.

Applications for access may be made either on a *Request to Access Information Form* or by letter, with the applicant providing as much detail as possible about the record to enable the public body to find it (**section 7(2)**).



Oral requests may be made in certain situations, such as when the applicant's ability to read or write in English is limited, or a physical disability or condition impairs the applicant's ability to make a written request (FOIP Regulation, **section 5**).

The applicant may ask either for a copy of the record or to examine the record (**section 7(3)**).

Sometimes only a part of a record is accessible because of the exceptions to disclosure under the Act. A public body must release as much of the record as it can so long as the disclosable portions of the record can reasonably be severed from the excepted portions (**section 6(2)**).

For certain government records (ministerial briefings and records in the custody of the Chief Internal Auditor of Alberta) an applicant's right of access does not apply for a prescribed period.

An applicant may indicate in a request that he or she wishes to have the request continue to have effect for a period of up to 2 years. This is known as a continuing request and may be used, for example, where the public body produces the requested records on a regular basis (**section 9**).

The head of a public body has a duty to make every reasonable effort to assist applicants and to respond openly, accurately and completely (**section 10(1)**).

A record must be created from a record in electronic form if this can be done by the public body using its normal computer hardware and software and technical expertise, and if creating the record would not unreasonably interfere

with the operations of the public body (**section 10(2)**).

A request must receive a response within 30 days unless the time limit is extended or the request is transferred to a more appropriate public body for response (**sections 11, 14 and 15**).

The head of a public body may deem a request abandoned if the applicant fails to respond within 30 days to a written request for additional information necessary to process the request, or for payment of a fee (**section 8**).

A critical part of the access process is applying the rules that set out how a public body must respond to an applicant. An applicant must be told whether or not access will be given and, if access will be given, when and how it will be given.

If access is refused, the applicant must be given reasons for the refusal as well as the name and address of a person who can answer questions about the refusal. In addition, the applicant must be told that he or she may request a review of the decision by the Information and Privacy Commissioner (**section 12**).

Only in a very limited number of cases may a public body refuse to confirm or deny the existence of a record. The Act allows this with law enforcement records or where the disclosure of records may be harmful to the applicant or any other person (**section 12(2)**).

Where access is granted, a public body must provide a copy of the record if it is requested and if the copy can reasonably be reproduced. Otherwise the person will be able to examine the record (**section 13**).

The head of a public body may require that the person be given a copy of the record, rather than the opportunity to examine it. This might be the case if providing for the examination of the records would unreasonably interfere with the operations of the public body or might result in the disclosure of information that the public body is required or authorized not to disclose (FOIP Regulation, **section 4**).

## **FEES**

Fees may be required for services provided to an applicant under the Act (**section 93**). The FOIP Regulation establishes a fee structure and maximum rates for providing access to general records and personal information.

The rates cited in the Regulation may be confirmed, or lower rates may be adopted by local public body bylaw or resolution. Generally, fees may be assessed for:

- searching for, locating and retrieving records;
- computer processing and programming;
- producing a copy of a record;
- preparing and handling a record for disclosure;
- shipping records to the applicant; and
- supervising examination of records by an applicant.

For requests for general information, the FOIP Regulation provides for a \$25 initial fee for one-time requests, a \$50 initial fee for continuing requests, and fees in addition to the initial fee where the cost of processing requests for records exceeds \$150.

When a request is for personal information about the applicant, the Act allows fees only for providing a copy of that individual's information. The FOIP Regulation stipulates that no fee will be assessed for providing a copy of an applicant's own personal information unless the cost exceeds \$10.

If an applicant is required to pay fees for services, the public body must provide an estimate of those fees before providing those services (**section 93(3)**). Processing of the request then ceases until the applicant agrees to pay the fee and deposits 50% of the estimated fee. The balance of the fee is payable when the information is available for delivery to the applicant (FOIP Regulation, **section 14**).

The head of a public body may excuse an applicant from paying all or part of a fee if:

- the applicant cannot afford to pay; or
- for any other reason it would be fair to excuse the fee; or
- the record relates to a matter of public interest, including an environmental, public health or safety matter (**section 93(4)**).

A public body must reply to a request for a fee waiver within 30 days.

If a request for a fee waiver is refused by the head, an applicant may ask the Commissioner to review that decision. Overall, the Act requires that fees charged not exceed the actual costs of the services provided (**section 93(6)**).

## EXCEPTIONS TO DISCLOSURE

Every access to information scheme recognizes that an absolute rule of openness with respect to records of a public body would impair the ability of the public body to discharge its responsibilities effectively. This philosophy is reflected in the Act by very specific and limited exceptions to the general rule of public access to information held by a public body (**sections 16 to 29**).

Most of the exceptions are discretionary, allowing a public body through its head or designated official to release or withhold information.

Only five very important exceptions specify circumstances in which a public body *must* refuse access to records. These are where the record concerns:

- 1) commercial information of a third party, including information on a tax return (**section 16**) (a third party being defined in the Act (**section 1(r)**) as someone other than the applicant or a public body);
- 2) personal information about a third party (**section 17**);
- 3) law enforcement information, but only if federal law would make it an offence to release the information (**section 20(4)**);
- 4) Cabinet and Treasury Board confidences (**section 22**); or
- 5) information subject to any type of legal privilege that relates to a person other than a public body (**section 27(2)**).

Each of the exceptions to disclosure is described in further detail below.

### Disclosure harmful to business interests of a third party (section 16)

This mandatory exception applies to third party trade secrets or financial, commercial, scientific, technical or labour relations information supplied implicitly or explicitly in confidence to a public body.

Unless the information was collected on a tax return, the exception only applies where disclosure could reasonably be expected to:

- harm significantly the competitive position or interfere significantly with the negotiating position of the third party;
- result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied;
- result in undue financial loss or gain to any person or organization; or
- reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

However, a public body may disclose this information if the third party consents or any other law allows disclosure, if the information relates to a non-arm's length transaction between a public body and another party, or if the information is in the Provincial Archives of Alberta or the archives of a public body and 50 years has passed since its creation.

**Disclosure harmful to personal privacy (section 17)**

A public body must refuse to disclose personal information if disclosure would be an unreasonable invasion of a third party's personal privacy.

There are, of course, situations where disclosure of personal information is *not* an unreasonable invasion of privacy, and the Act specifies circumstances in which personal information should be accessible. **Section 17(2)** states that disclosure of personal information about a third party is not an unreasonable invasion of personal privacy if, for example:

- the third party consents in the prescribed manner to the disclosure;
- a law authorizes the disclosure;
- the information concerns salary ranges or classification of public employees; or
- the information is about a licence or permit relating to a commercial or professional activity or to real property.

The Act also recognizes situations where there is a legitimate community interest in certain personal information. Section 17(2)(j) of the Act allows disclosure of information about:

- enrolment in a school or a post-secondary program;
- participation in a public event or activity such as a graduation ceremony, a sporting event, a cultural program or a field trip; and
- receipt of an honour or award from a public body.

This information is available for access provided that the disclosure would not be contrary to public interest and the individual concerned has not requested that the information not be disclosed (**section 17(2)(j)** and **section 17(3)**).

The Act sets out specific situations where it is presumed that disclosure of personal information is an unreasonable invasion of privacy. This is the case where, for example, the personal information is medical information, or it relates to income assistance, employment or educational history, or it was collected on a tax return (**section 17(4)**).

The section also sets out relevant circumstances that a head must take into account in determining whether a disclosure is an unreasonable invasion of privacy (**section 17(5)**).

**Disclosure harmful to individual or public safety (section 18)**

This exception may be applied if disclosure of information could be expected to threaten the mental or physical health of any person or to interfere with public safety. Where it is proposed to withhold personal information concerning an applicant on the basis of a serious risk to the individual's health or safety, the decision must have the support of a physician, psychologist, psychiatrist or another appropriate expert.

This exception may also be applied to protect the identity of an individual who provides information about a threat to the health or safety of an individual.

**Confidential evaluations  
(section 19)**

This exception permits a public body to refuse disclosure of personal information about an applicant that is evaluative or opinion material compiled to determine a person's suitability, eligibility or qualifications for employment, contracts or other benefits.

If a public body uses a 360 degree performance evaluation process, the public body may also refuse to disclose information that would identify a peer, subordinate or client who participates in the formal performance evaluation of an employee, if the information was provided in confidence.

**Disclosure harmful to law  
enforcement (section 20)**

Specific and limited exceptions are set out for law enforcement information. Law enforcement is defined to include police, security and administrative investigations or proceedings that could lead to a penalty or sanction being imposed (**section 1(h)**). The definition of a law enforcement record includes the complaint that gives rise to the investigation.

Most of the provisions in this exception are subject to discretionary disclosure by the public body, except where a federal law makes it an offence for a record of this nature to be disclosed (**section 20(4)**).

Reports of routine inspections and statistical reports are not covered by the exception (**section 20(5)**).

Reasons for a decision not to prosecute may be disclosed to significantly

interested persons, including the victim. If the fact of the investigation has been made public, reasons for the decision not to prosecute may also be disclosed to other members of the public (**section 20(6)**).

**Disclosure harmful to  
intergovernmental relations  
(section 21)**

This exception applies to information which, if disclosed, would be harmful to relations between the Government of Alberta and other governments, or local government bodies or organizations which exercise government-like functions, including Indian bands.

Disclosure of such information requires the consent of the Minister responsible for the FOIP Act.

If a government or other organization included in this section has supplied information to the Government of Alberta in confidence, then disclosure of the confidential information requires the consent of that body.

The section does not apply to information that has been in existence for 15 years or more (**section 21(4)**).

**Cabinet and Treasury Board  
confidences (section 22)**

Requests for access to information about the substance of deliberations of Cabinet and Treasury Board or any of their committees must be refused by a head of a public body.

Included in this exception are advice, recommendations, policy considerations and draft legislation and regulations

submitted or prepared for submission to Cabinet or Treasury Board or any of their committees.

The section does not apply to:

- information that has been in existence for 15 years or more;
- information in a decision made on an appeal to Cabinet or any of its committees; or
- background facts in a record for consideration in making a decision, if the decision has been made public or implemented, or 5 years have passed since the decision was made or considered.

#### Local public body confidences (section 23)

This exception permits a local public body (defined in **section 1(j)**) to refuse to disclose information if the disclosure could reasonably be expected to reveal:

- draft resolutions, bylaws and other instruments by which a local public body acts, or
- the substance of deliberations of an authorized *in camera* meeting of its elected officials, or its governing body or a committee of its governing body. (Circumstances where the substance of *in camera* meetings may be excepted from disclosure are included in some specific Acts, such as the *Municipal Government Act*, and in the FOIP Regulation, **section 18**.)

The section does not apply to draft bylaws or other instruments that have been the subject of a public meeting or information that has been in existence for 15 years or more.

#### Advice from officials (section 24)

This exception recognizes that there is a public interest in not permitting unlimited access to records relating to policy development and decision-making in public bodies. It recognizes that there must be candid discussions, deliberations and the like so as not to impair the workings of public bodies.

It should be noted that there are a number of situations where this exception does not apply, such as where:

- the information is over 15 years old;
- the information is a statement of reasons for a decision by a public body exercising a discretionary power or judicial function;
- the information consists of completed scientific or technical background research or is the result of completed product or environmental testing; or
- the information is a statistical survey (**section 24(2)**).

#### Disclosure harmful to economic and other interests of a public body (section 25)

This exception mirrors in many ways the commercial exception that applies to third parties. It permits a public body to refuse to disclose information if disclosure could reasonably be expected to harm its own economic interests.

This might be the case with information such as:

- trade secrets;
- financial, commercial, scientific, technical or other information in

which a public body has a proprietary interest or a right of use with some monetary value; and

- information which, if disclosed, could reasonably be expected to result in financial loss, prejudice to the public body's competitive position, or interference in its contractual or other negotiations.

This exception does not apply to certain product or environmental testing results.

#### **Testing procedures, tests and audits (section 26)**

This exception is limited to information which, if disclosed, could reasonably be expected to prejudice the use or results of particular tests or audits.

#### **Privileged information (section 27)**

This exception is designed to allow public bodies to protect legal advice provided to the public body, information prepared for litigation, and other information related to legal services. Public bodies *must* refuse to disclose privileged information of third parties.

#### **Disclosure harmful to the conservation of heritage sites and endangered forms of life (section 28)**

The preservation of such things as historic resources and rare, endangered, threatened or vulnerable forms of life is an important public concern. This exception applies only where the disclosure of information could reasonably be expected to result in damage to or interfere with the conservation of historic resources or those forms of life.

#### **Information that is or will be available to the public (section 29)**

Many records that might be the subject of a request under the Act are already available to the public or are about to be made available. Unnecessary effort and expense by a public body might result if requests for access to such information were allowed under the Act.

This exception permits a public body to use other channels for making such information available to the applicant. Information must already be available to the public or at least be so within 60 days for this exception to be applicable. The section provides for situations where information expected to be published in 60 days is not published within that time period.

#### **RIGHTS OF THIRD PARTIES**

In many cases a requested record includes information about a third party (defined in **section 1(r)** as someone other than an applicant or a public body). This is especially significant when third party personal information and third party commercial information is involved. The Act tries to strike a balance between the interests of the third party and the rights of an applicant.

If the head is considering giving access to information that may fall under the exception dealing with third party commercial information or with third party personal privacy, the head of a public body is required to notify the third party and provide the third party with a copy of the record or describe its contents. The third party has 20 days to either consent to the disclosure or make representations explaining why the

information should not be disclosed (**section 30(4)**).

The applicant must also be given notice that third party interests may be affected (**section 30(5)**).

A decision as to whether or not information will be disclosed must be made within 30 days of the notification of the third party, and notice of the decision must be provided to both the applicant and the third party. If it is decided to release the record, the third party has 20 days to ask the Information and Privacy Commissioner to review the decision (**sections 31** and **66(2)(b)**).

An applicant has 60 days to ask the Commissioner for a review if the public body decides not to give access to a record (**sections 31** and **66(2)(a)**).

## **PUBLIC INTEREST OVERRIDE**

Whether or not a request is made, the head of a public body is obliged to disclose information without delay about a risk of significant harm to the environment or to the health and safety of the public or about other matters clearly in the public interest (**section 32(1)**).

This obligation overrides any other provision of the *Act*, including the mandatory exceptions (**section 32(2)**).

**Section 32** also includes provisions for notice to affected third parties (**section 32(3)** and **(4)**).

## **PROTECTION OF PRIVACY**

The Act recognizes the extreme importance that Albertans place on the privacy of information about themselves that may be in the hands of a public

body. It should be noted that **Part 2** of the Act is completely separate from the access provisions in **Part 1** of the Act. **Part 2** deals with how a public body must collect, use and disclose personal information on a day-to-day basis.

Fundamental principles 2, 3 and 4 of the Act (see pp. 1-2 of this Guide) are directed at ensuring that the desire for privacy of Albertans is met, yet at the same time balancing the legitimate needs of public bodies and others.

Personal information is defined in detail in the Act (**section 1(n)**) and includes, but is not limited to:

- the individual's name, home or business address or home or business telephone number;
- the individual's race, national or ethnic origin, colour or religious or political beliefs or associations;
- the individual's age, sex, marital status or family status;
- an identifying number, symbol or other particular assigned to the individual;
- the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics;
- information about the individual's health and health care history, including information about a physical or mental disability;
- information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given;
- anyone's opinion about the individual; and



- the individual's personal views or opinions, except if they are about someone else.

**Division 1 of Part 2** provides rules as to how and for what purpose public bodies can collect personal information. The right of an individual to seek correction of personal information, and the obligations of public bodies in regard to the protection, accuracy and retention of personal information, are also set out.

The provisions governing the use and disclosure of personal information by public bodies are found in **Division 2 of Part 2**.

Disclosure of personal information to the person the information is about may be made under **Part 2** of the Act in some circumstances. In some cases a public body may have a policy of routine disclosure of an individual's file to that individual. Other circumstances require an individual to submit an access request under **Part 1**.

Provisions for the disclosure of personal information in archives are set out in **Part 3** of the Act.

## COLLECTION OF PERSONAL INFORMATION

A public body cannot collect personal information from an individual unless the collection is expressly authorized by an Act or regulation of Alberta or Canada, or it relates to law enforcement, or it is necessary for an operating program or activity of the public body (**section 33**).

Except in certain specified circumstances, the individual must be told the purpose of the collection, the specific legal authority for the collection

and who can answer questions about the collection (**section 34(2)**).

Personal information must be collected directly from the individual the information is about except in certain specified situations. Personal information may be collected indirectly only:

- where the individual has consented to indirect collection;
- where another method of collection is authorized under an Act;
- where information is collected for the purpose of law enforcement;
- in certain emergency situations; or
- in another of a limited number of instances (**section 34**).

Public bodies also have a duty to ensure that reasonable security arrangements are maintained for personal information in their custody (**section 38**).

## USE OF PERSONAL INFORMATION

A public body may use personal information it collects from individuals only for the purpose for which it was obtained or a consistent purpose; for another purpose with the consent of the individual; or for purposes allowed under the disclosure provisions of the Act (**section 39**).

A consistent purpose is a purpose which has a reasonable and direct connection to the purpose for which the information was collected and is necessary for an operating program or statutory duty (**section 41**).

A public body must make every reasonable effort to ensure that the

personal information it uses is accurate and complete (**section 35(a)**). It is a fundamental principle of the Act that an individual has a right of access to his or her own personal information (subject to very narrow exceptions), and a right to request a correction of information that the individual believes may contain an error or omission.

The public body must either make the correction or make a note of the request in the file. In either case the public body must, within 30 days, notify the individual concerned of the action taken (**section 36**).

Generally, the public body must also notify any other public body or third party to whom the personal information has been disclosed in the year prior to the correction or notation. Because of the right to request a correction and the individual's right of access to his or her own personal information, a public body must generally retain information it uses for at least one year after it has been used (**section 35(b)**).

## **DISCLOSURE OF PERSONAL INFORMATION**

Specific rules are set out in the Act to ensure that an individual's personal information is not disclosed beyond what is required for the proper operation of a public body, or for the legitimate interests of researchers and others.

Under the access provisions of the Act there are, as noted earlier, significant limitations on access by third parties to the personal information of another individual (**section 17**).

**Section 40** provides for specific situations where a public body may disclose personal information without an

access request. The Act restricts the disclosure of personal information to situations where, for example, there is no unreasonable invasion of personal privacy:

- where the information is to be used for a purpose consistent with the purpose for which it was collected;
- where the individual consents to the disclosure;
- where another Act or regulation of Alberta or Canada authorizes or requires disclosure;
- where the disclosure is to comply with an order from a court having jurisdiction in Alberta; or
- where information is to be disclosed to a relative of a deceased individual.

Disclosure for research purposes is rigorously constrained in **section 42** by requiring researchers to show that:

- their research cannot be accomplished without individually identifiable information;
- there is a public interest in any record linkage that might occur and this will not harm the individuals concerned;
- appropriate security arrangements are made for the use and disclosure of the personal information; and
- they have signed agreements requiring them to comply with these and other conditions regarding disclosure.

In addition, **section 9** of the FOIP Regulation sets out specific requirements that must be included in researcher agreements and provides that if a person fails to meet the conditions of the agreement, that agreement may be immediately cancelled and the person

may be guilty of an offence under **section 92(1)** of the Act.

## DISCLOSURE OF INFORMATION IN ARCHIVES

The Provincial Archives of Alberta and the archives of a public body may also disclose personal information in a record (**section 43(1)(a)**) where:

- the information has been in existence for 25 years or more, if the disclosure would not be an unreasonable invasion of personal privacy under **section 17** or the disclosure is in accordance with **section 42**; or
- the information has been in existence for 75 years or more.

Special provisions are also made for disclosure of general information in the Provincial Archives (**section 43(1)(b)**).

## ROLE OF THE INFORMATION AND PRIVACY COMMISSIONER

The last fundamental principle of the Act is reflected in the provisions for the appointment of an independent Information and Privacy Commissioner (**Part 4**).

The Commissioner has a broad range of powers under the Act, including (under **section 53**) the power to:

- conduct investigations to ensure compliance with the Act or with other legislation with respect to the destruction of documents;
- inform the public about the Act;
- engage in research;
- investigate and attempt to resolve complaints that a duty to assist the public has not been performed, and

- determine that a fee is inappropriate.

The Commissioner may also give advice and recommendations to heads of public bodies on matters concerning the Act (**section 54**).

The Commissioner has the power to authorize a public body to disregard requests (**section 55**) and has broad powers in conducting investigations (**section 56**).

The Act protects statements made to the Commissioner from being used as evidence in a legal proceeding (**section 57**); provides that anything said to the Commissioner is privileged (**section 58**); restricts disclosure of information by the Commissioner and his staff (**section 59**); and provides for an annual report by the Commissioner (**section 63**).

The Commissioner's major role is to respond to requests for review of decisions of the heads of public bodies and to investigate complaints. A request for a review (**section 65**) may be made by:

- a person who has made a request to the head of a public body for access to a record, or for correction of personal information, on any decision, act or failure to act by the head of the public body; or
- a third party notified about an access request, with respect to a decision made by the head of a public body about the intended disclosure of the third party's information; or
- a person who believes that his or her own personal information is being collected, used or disclosed contrary to the Act; or

- a person who has been refused information about a relative under **section 40(1)(cc)**.

A written request for a review must normally be made to the Commissioner within 60 days after the head's decision (**section 66**). A third party has only 20 days to request a review under **sections 31(4) and 66(2)(b)**. Comprehensive rules are provided in the Act to regulate the conduct of a review (**sections 67 to 71**).

On completion of a review, the Commissioner may make a wide range of orders including requiring a head to give access to a record; confirming the decision of a head; requiring duties under the Act to be performed; confirming or reducing time extensions under **section 14** and so on.

Terms and conditions of the order can be specified by the Commissioner and a copy of the order may be filed in the Court of Queen's Bench (**section 72**). An order of the Commissioner is final (**section 73**).

Within 50 days of receiving an order of the Commissioner, the head of the public body concerned must comply with the order, provided there has been no application made for judicial review (**section 74**).

## **DISCLOSURE TO THE COMMISSIONER**

**Section 81** allows an employee of a public body to disclose to the Commissioner any confidential information that the employee, acting in good faith, believes ought to be disclosed under the public interest override provision of the Act (**section 32**).

An employee may also disclose to the Commissioner any information that he or she believes is being collected, used or disclosed in violation of the privacy provisions of the Act (**Part 2**).

The Commissioner must investigate such disclosures (**section 82(2)**) and must not disclose the name of the employee without that employee's consent (**section 82(3)**).

An employee acting in good faith is protected from prosecution for copying or disclosing the information (**section 82(4)**) and is protected from any adverse employment action (**section 82(5)** and **section 82(6)**).

The Commissioner is given the same broad powers of investigation and order-making powers under these circumstances as he would otherwise have under the Act (**section 82(7)**).

## **OFFENCES**

The Act establishes a number of offences, including:

- collection, use or disclosure of personal information in violation of **Part 2**;
- attempting to gain or gaining access to personal information in violation of the Act;
- making a false statement to or misleading or attempting to mislead the Commissioner or another person in the performance of the duties, powers or functions of the Commissioner or the other person under the Act;
- obstructing the Commissioner or another person in the performance of the duties, powers or functions of the

Commissioner or the other person under the Act;

- altering, falsifying or concealing any record, or directing another person to do so, with the intent to evade a request for access to the record;
- failing to comply with an order made by the Commissioner; and
- destroying any records subject to the Act, or directing another person to do so, with the intent to evade a request for access to the records.

A person who is guilty of an offence is liable to a fine of not more than \$10,000 (section 92(1) and (2)).

It is also an offence if a person, including a contractor, a subcontractor, and any of their employees, wilfully disclose personal information to a court that does not have jurisdiction in Alberta, such as a court of another country (section 92(3)).

An individual guilty of an offence under section 92(3) is liable to a fine of not less than \$2,000 and not more than \$10,000, and in the case of any other person, to a fine of not less than \$200,000 and not more than \$500,000 (section 92(4)).

A prosecution must commence within two years after the commission of the alleged offence (section 92(5)).

### WHAT ELSE IS IN THE ACT?

- How notice is to be given under the Act (section 83).
- How a right of an individual can be exercised by someone else such as a guardian, trustee or personal representative (section 84).

- The power to delegate by the head of a public body (section 85).
- Annual report of the Minister responsible for the Act (section 86).
- The power of the head of a public body to specify records that are available without the need for a request (section 88).
- Rules governing proceedings against the heads of public bodies or anyone acting for or under the direction of a head (section 90).
- A regulation-making power (section 94).
- The power of local public bodies to make bylaws to do various things, such as designating the head of the public body (section 95).
- A statement that the Act applies to records created both before and after the Act came into force (section 96).
- A provision for review of the Act by a select special committee of the Legislative Assembly to commence by July 1, 2010 (section 97).

### FURTHER INFORMATION

Further information on the FOIP Act and Regulation may be obtained by contacting:

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3<sup>rd</sup> Floor, 10155 – 102 Street  
Edmonton, Alberta T5J 4L4  
Phone: 780-422-2657  
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