



Frequently Asked Questions from Employees

The Freedom of Information and Protection of Privacy (FOIP) Act aims to strike a balance between the public's right to know and the individual's right to privacy, as those rights relate to information held by public bodies in Alberta.

PERSONAL INFORMATION OF EMPLOYEES

- 1. Do I need to make a written FOIP request to review my personnel file?**
 - Normally employers have a routine procedure in place to provide employees with access to their personnel file. If there is a collective bargaining agreement in place, the procedure may be included in the agreement.
 - If this process fails, an employee may make a written FOIP request for access to the records.
 - You have a right to see records containing personal information about you, subject to limited exceptions.
 - For example, some of your personal information could be withheld if disclosing it to you could threaten someone's health or safety (**section 18**), or be harmful to law enforcement (**section 20**).
 - If your personnel file contains personal information about another person, this information would be withheld from you if it would be an unreasonable invasion of the other person's privacy to release it (**section 17**).

- 2. My supervisor keeps an informal file on me, separate from my personnel file. Can I access it?**
 - Yes. This file is in the custody or control of the public body, and is therefore subject to the FOIP Act. You can request access to all of your personal information contained in it, subject to any exceptions as outlined in [question 1](#).

- 3. Can I access the results of my performance review?**
 - This is personal information about you and you have the right to access it, subject to any exceptions outlined in [question 1](#).
 - If your public body collects information to review performance from co-workers, clients and others, such as in a "360°" performance appraisal process, your employer can protect the identity of a reviewer, other than your supervisor, if confidentiality has been promised. The substance of the comments on performance would be released to you (**section 19**).

4. Who else can access my personnel file?

- Officers or employees of the public body where you are employed can access personal information about you if it is necessary for the performance of their duties (**section 40(1)(h)**).
- Your personal information is generally not accessible by the public, as this would be an unreasonable invasion of your privacy. However, the public could access limited information such as your job classification, salary range and employment responsibilities since under the FOIP Act this is not an unreasonable invasion of your privacy (**section 17(2)(e)**).

5. What personal information can my employer collect about me?

- Your employer can collect personal information that relates directly to and is necessary for an operating program or activity, as well as any information they are authorized by other legislation to collect (**section 33**).
- Under the FOIP Act, your employer must tell you what authority they have to collect this information, and how it will be used (**section 34(2)**).
- Normally, your employer must collect personal information directly from you. However, **section 34** of the Act allows for information to be collected indirectly in some cases, for example, to determine whether you are eligible for a program, benefit, honour or award, or for the purpose of collecting a debt owed to the public body.

6. What information can my employer release about me?

- Your employer is entitled, under **section 40** of the Act, to give out information about you in various circumstances. Some examples are outlined below:
 - if the information about you is information of a type routinely disclosed in a business or professional context, such as "business card" contact information (**section 40(1)(bb.1)**)
 - if you are ill or injured so that a friend or relative can be contacted (**section 40(1)(s)**)
 - to assist in a law enforcement investigation (**section 40(1)(q)**)
 - if you consent to the release of information (**section 40(1)(d)**)
- If a member of the public makes a request under the Act for access to your information, **section 17** sets out what can and cannot be released. Information will not be released if its disclosure would be an unreasonable invasion of your privacy.
- Release of some personal information, for example, employment or educational history, medical information, religious or political beliefs and tax information, is presumed to be an unreasonable invasion of privacy. Without consent, such information would only be released in exceptional circumstances.
- The FOIP Act also stipulates that the release of other information would not unreasonably invade privacy. For instance, it is permissible under the Act to release information about your job classification, salary range, discretionary benefits or employment responsibilities. This could include travel expense claims.

7. Will my personal information be protected?

- The head of the public body that employs you is obligated to protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, or destruction of records (**section 37**).
- In practice this may mean separating your personal information into several files rather than keeping one large file, so that other employees in your organization only have access to the personal information about you that they need in order to perform their duties. For instance, your supervisor has a need to see your performance reviews, but would not usually require access to personal information collected by the personnel department for income tax purposes.

8. Is health information treated any differently?

- If you work for a "custodian" under the *Health Information Act* (April 2001) the health information in your personnel file is protected by that Act. Custodians include regional health authorities, the Alberta Cancer Board and the Alberta Mental Health Board.
- The FOIP Act still applies to health information held by other types of public bodies.

9. Can employee personal information be used for social purposes, such as to celebrate birthdays or extend invitations to social events?

- If the social event is an operating program of the public body, employee information could be used to send invitations.
- Employee information cannot be used to celebrate birthdays or for other non-work-related social purposes without employee consent, since the information was not collected by the employer for this purpose.

10. Are the notes I write in my calendar or notebook subject to the FOIP Act?

- The FOIP Act applies to all records in the custody or under the control of a public body (**section 4(1)**).
- If your personal notes are on site at your place of employment, they are in the custody of the public body and are therefore subject to and accessible under the Act.
- Similarly, even if your personal notes are at your home or in your car, if they were made in the course of your duties and relate to the business of the public body, they are under the control of the public body and are subject to the FOIP Act.

11. Can my employer release my personal information to Canada Revenue Agency?

- Yes. **Section 40(1)(e)** allows for disclosure to comply with another Act. If this is the basis for the request for information, the official from Canada Revenue Agency would have to provide proof of identity and the specific authority under which the information is being requested.

12. Can I access my Workers' Compensation Board claim records?

- This is your personal information and you have the right to access it, subject to limited exceptions.
- The Workers' Compensation Board (WCB) is subject to the FOIP Act, so the request for records should be directed to the WCB. It may not be necessary to make a FOIP request to see your WCB file.

13. Can personal information be collected about an employee in an internal investigation without his/her permission?

- Yes, in certain circumstances this can be done. **Section 34(1)(g)** allows for indirect collection for the purpose of law enforcement, **section 34(1)(n)** for management and administration of personnel and **section 34(3)** is an override section that applies if the head of the public body believes compliance with collection rules would result in collection of inaccurate information.

FORMER EMPLOYEES

14. Can employers give references for former employees?

- Generally, an employer can give reference information to any prospective employer if the employee consents (**section 40(1)(d)**). The employer can only disclose information which the employee has specifically consented to have disclosed.
- An employer can give reference information regarding a former employee within the public body without that employee's consent under **section 40(1)(x)** of the Act.

15. Can former employees access their personnel files?

- Yes. This information remains the personal information of the former employee and they have the right to access it, subject to any exceptions as outlined in question 1.

16. Can others access my severance agreement under FOIP?

- It is quite likely. In *Order 2001-020*, the City of Calgary received a request for all information related to a buy-out for managers since 1999.
- The Information and Privacy Commissioner upheld the City's decision to release standard clauses from the severance agreements, the individual's job title or position, and the amount of severance paid. This information could be released in accordance with **section 17(2)(e)**.
- The City withheld the individuals' names and signatures (**section 17(4)(g)(i)**), and employee numbers, and termination and retirement dates as employment history (**section 17(4)(d)**).
- It is not clear how the order would apply if the applicant had asked for the severance package information of a named individual. However, it appears that the same considerations of **sections 17(2)** and **17(4)** may apply and the outcome may be the same.

THE HIRING PROCESS

17. When I apply for another job, can the employer contact anyone for a reference, or can they only contact the persons I have named?

- When you apply for a job with a public body that is subject to the FOIP Act, the recruiters have the authority under **section 34(1)(n)** of the Act to collect references from anyone, whether or not you have given their names as references. However, they have a duty to take reasonable steps to ensure the reference information is accurate before using it to make a decision about you (**section 35(a)**).

18. When I am contacted to provide a reference for a former or current employee, what information can I disclose?

- Without the employee's consent, you could provide a reference within your public body, but not to anyone outside your public body. You may only disclose the personal information necessary to enable the public body to make their hiring decision.

19. What information can job applicants find out after a candidate has been chosen?

- Candidates can generally see all of their own personal information, provided that personal information about other candidates is severed from the records. Other information which could be disclosed includes factors used in assessment, and ratings and rankings provided no personal identifier is disclosed.
- Candidates can generally access their references' comments, since this is information about them. However, if the references were supplied in confidence, the information may be withheld under **section 19** of the FOIP Act.
- In *Order F2002-008*, the Adjudicator upheld the public body's decision to withhold two pages of hand-written notes made by an employee of the public body while conducting a telephone reference check on the applicant. The information in the two pages satisfied the three-part test under the exception for confidential evaluations (**section 19(1)**) as the pages contained personal information that was both evaluative and opinion, the information was compiled for the purpose of determining the applicant's suitability, eligibility and qualifications for a particular position, and the information was supplied in confidence.
- In *Order F2002-027*, the Adjudicator upheld the public body's decision to withhold a letter of reference that was submitted to the public body in confidence for the purpose of determining the applicant's suitability, eligibility or qualification for employment, and that contained confidential evaluations and opinions.

20. What happens to job applicants' personal information after a candidate is chosen?

- If the public body uses the information to make a decision about the individual, it must be retained for at least one year (**section 35(b)**).

21. What happens to unsolicited applications or resumes?

- This depends on the records management policy of the public body.
- Unsolicited applications or resumes may be discarded upon receipt if the public body considers unsolicited applications to be transitory documents.
- If an unsolicited application was considered in the process of a personnel search then it must be retained for at least one year.

22. Can I view notes made about me during an interview by the interviewers?

- This is your personal information and you have the right to access it, subject to any exceptions as outlined in [question 1](#).

UNIONIZED WORKPLACES

23. Can I make a FOIP request for my employee file during a grievance proceeding?

- You can make a written FOIP request at any time. You have the right to request to see records containing personal information about you, subject to any exceptions as outlined in [question 1](#).
- The collective agreement may stipulate rules for the disclosure of information during a grievance proceeding. **Section 3(a)** of the FOIP Act states that the Act is in addition to existing procedures for access, so the FOIP process does not replace existing procedures.
- The public body has 30 days to reply to your access request, and may extend the response deadline in certain limited circumstances (**section 14**).

24. Can I ask the shop steward to act on my behalf?

- You can authorize a representative of the union or association to receive personal information about you, such as records relating to your employment, by putting your authorization in writing (**section 40(1)(o)**).
- The employer will take this into consideration in deciding whether to disclose the information. In some cases, the employer may double-check with you before releasing the information, if they believe you may not be fully aware of the sensitive nature of the records they are about to release.

25. What information can employers routinely disclose to unions?

- **Section 40(1)(e)** of the Act permits, but does not require, the employer to disclose personal information the employer has agreed to disclose to the union in a collective bargaining agreement.
- **Section 17(2)(e)** of the Act specifies other information which may be disclosed without unreasonably invading the personal privacy of employees of public bodies. This includes the job description, salary range, and employment responsibilities of an employee.
- **Section 40(4)** applies a "need to know" test to all disclosures of personal information made under **section 40**, including disclosures to unions.

26. I don't belong to the union, so can my employer release personal information about me to the union?

- Under Alberta's labour legislation, all employees in a bargaining unit are subject to the collective bargaining agreement. If the collective bargaining agreement states that personal information will be provided to the union, then the disclosure is permitted under **section 40(1)(e)** of the Act.

27. Can I access personal information collected about me during an internal investigation or disciplinary proceeding?

- This is your personal information and you have the right to access it, subject to limited exceptions. **Section 20** of the Act allows for information to be withheld if it would be harmful to law enforcement matters. However, it is unlikely that your personal information relating to an internal investigation or disciplinary proceeding could be withheld under this exception since, unless part of a quasi-judicial process, disciplinary proceedings are not considered to be a law enforcement matter.

28. Once I file a grievance, can I make a FOIP request for my employer's records related to the grievance?

- You can make a FOIP request at any time.
- The employer has the option of applying several sections of the FOIP Act to such records. **Section 24**, advice from officials, may apply to certain information on the records. **Section 27** would apply to information that is subject to legal privilege. **Section 25** may apply to information that could reasonably be expected to harm economic or other interests of the public body. **Section 20** would apply if the matter relates to law enforcement.
- The employer has 30 days to reply to a FOIP request, and in limited circumstances may extend the response date by up to an additional 30 days.

29. Can a FOIP request be made for a memorandum of agreement, after it is signed, but before it has been ratified?

- Any applicant may make a FOIP request for any records in the custody of a public body. Memoranda of agreement would be in the custody of the union and the employer. In some instances they may also be with a mediator under contract to Alberta Employment and Immigration.
- An applicant cannot make a FOIP request to a union as unions are not subject to the Act. An applicant could make a FOIP request to a public body subject to the Act, such as a school board, regional health authority, municipality, government department or the Labour Relations Board.
- If such a request were made to the employer (who was a public body), the employer could refuse to disclose information under **section 25** of the FOIP Act, as a disclosure harmful to the interests of the public body. This section applies to information the release of which could interfere with the negotiations of the public body.
- The employer could also apply **section 29(1)**, and refuse to disclose information if the employer expects the information to be released to the public within 60 days of receiving the request.
- Under **section 16** of the FOIP Act, the public body must refuse to disclose information that would reveal labour relations information supplied in

confidence. This section would be used if the employer received a FOIP request from anyone not a party to the negotiations, such as the media or another union or employer. If the request were made to the Labour Relations Board, Alberta Employment and Immigration or another government department involved in collective bargaining, **section 16** would be applied.

- Note that public bodies have 30 days to respond to a FOIP request and in limited circumstances may extend the response date by up to an additional 30 days. Normally memoranda of agreement are ratified within a few days so it unlikely that a FOIP request would provide the information on a timely basis.

30. Can a FOIP request be made for the notes of a mediator appointed by the Minister of Employment and Immigration?

- Since mediators are contractors, they are considered to be employees of Alberta Employment and Immigration under the FOIP Act (**section 1(e)**). The FOIP Act applies to the records they create.
- If a party to the mediation (the union or employer) requested the records, the information supplied by that party could be released. The labour relations information supplied by the other party would be severed under **section 16**. None of the information would be released to others not involved in the mediation.

31. What is a "personal information bank" (a PIB)?

- **Section 87.1(5)** of the FOIP Act contains the definition of a PIB. Basically it is any collection of personal information where information about an individual can be found using the individual's name or a unique identifier, such as social insurance number, client number or employee number.
- Public bodies are required to have a list that describes their PIBs available at their offices, and to provide it to the public upon request.
- Service Alberta's publication entitled *Guide to Identifying Personal Information Banks* may be referred to for more information.

For more information contact:

► [Your Public Body's FOIP Coordinator](#)

► **FOIP Help Desk**

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