



Frequently Asked Questions For Housing Management Bodies

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.

LOCAL GOVERNMENT BODIES

1. What is a "local government body" under the FOIP Act?

- The Act defines a local government body in **section 1(i)**.
- The definition includes housing management bodies, municipalities, improvement districts, special areas, regional services commissions, public libraries, police services, police commissions, drainage and irrigation districts, Metis settlements, and certain boards, committees, etc. of these local government bodies.
- A housing management body is one established under the *Alberta Housing Act*.

RECORDS

2. What is a "record"?

- **Section 1(q)** of the FOIP Act defines a record as "information in any form and includes notes, images, audio-visual 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, but does not include software or any mechanism that produces records".
- It includes handwritten notes and electronic correspondence or messages, which are in the custody or control of a public body.
- Not all records need to be kept by a housing management body. You can routinely discard transitory records, those that have only short-term, immediate or no value to your housing management body and that you won't need again in the future. For more information about transitory records, see the guide *Official and Transitory Records: A Guide for Government of Alberta Employees*, which is available on the government's Records and Information Management website (www.im.gov.ab.ca).
- If the information in a record will have some future administrative, financial, legal, research or historical value to the housing management body, then you should file the record. For example, e-mail messages that record approvals, recommendations, opinions, decisions or business transactions have future value, and are not transitory and should be filed. You can print and file them in your manual filing system or store them in an electronic filing system.

3. What records of housing management bodies are subject to the FOIP Act?

- All records that are in the custody or under the control of the housing management body are subject to the FOIP Act (**section 4(1)**) unless a specific exclusion applies.
- A housing management body has custody of a record when the record is in the possession of the housing management body. This includes situations where the records of a third party are kept on the premises of a housing management body.
- A record is under the control of a housing management body when it has the authority to manage the record, including restricting, regulating and administering its use, disclosure and disposition.

4. How long should a housing management body keep its paper/electronic records?

- There is no simple answer to this question. Each housing management body should establish records retention and disposition schedules for its various records series. The FOIP Act allows the destruction of records in accordance with your records retention resolution. If a housing management body does not have such a resolution, the Act allows destruction as authorized by the board (**section 3(e)(ii)**).
- Under **section 53(1)(a)**, the Commissioner has the power to conduct an investigation into how a housing management body is managing its records. Specifically, the Commissioner can check to make sure that a housing management body is following any resolution it has regarding the destruction of records.
- Housing management bodies must continue to comply with other legislation, including the Management Body Operation and Administration Regulation, which may set additional records retention requirements. Section 13(4) of the Management Body Operation and Administration Regulation reads:
A management body shall retain in its possession in Alberta all records, books, documents and accounts created under the Act for not less than 7 years.
- Housing management bodies are required by **section 35** to keep personal information about an individual for at least one year if that personal information has been used by the housing management body to make a decision about the individual.
- Alberta Seniors and Community Supports, Family and Special Purpose Housing, has developed a records retention guide for housing management bodies. This is available free of charge.

5. Should e-mail be printed before it is deleted, or should it be saved instead of being deleted?

- The same records management principles for paper files/records should also apply to e-mail documents. Transitory e-mails may be deleted.
- How or where the e-mail documents are retained will depend on the housing management body's records and information management program standards, and whether it has the capability of filing documents required for future use electronically. If the housing management body does not have that capability, records should be printed and filed in the paper filing system.

6. Are records of board members of housing management bodies excluded from the FOIP Act?

- Personal records of appointed board members are not subject to the Act (**section 4(1)(n)**). Examples of personal records could be records relating to private business activities of board members, or private correspondence that was not sent or received by the board member in his or her official capacity but is stored at his or her office for convenience.
- Records relating to the business of the housing management body are covered by the Act even if they are stored at a board member's home.

7. How can a housing management body keep track of board members' records that pertain to the business of the housing management body?

- The housing management body should have realistic policies in place about what records board members can and cannot store at their homes. For example, you could have a policy that board members will leave all meeting notes with the minute-taker before leaving the meeting. This practice would reduce potential privacy violations.
- If a FOIP request is received for certain information, the FOIP head must make his or her best efforts to ensure that the housing management body has all records relating to the request. This may include asking board members for business records they keep at their homes.

8. If an employee or board member willfully violates the FOIP Act, for example by destroying records to evade a FOIP request or disclosing information inappropriately, could there be a penalty?

- Yes. The housing management body or the individual could be liable to a fine of up to \$10,000 under **section 92** of the FOIP Act.
- Fines are higher for when a person willfully discloses personal information pursuant to a subpoena, warrant or order issued or made by a court, person or body having no jurisdiction in Alberta to compel the production of information or pursuant to a rule of court that is not binding in Alberta. An individual could be liable to a fine of not less than \$2000 and not more than \$10,000, and a housing management body could be liable to a fine of not less than \$200,000 and not more than \$500,000.

9. Does the FOIP Act apply to records, which are at the residences of former board members?

- These records are treated no differently than records of current board members. See questions [2](#) through [7](#).
- Housing management bodies still have control over records relating to the business of the housing management body, even if they are at the home of a former board member. Thus, these records are still subject to FOIP.
- Housing management bodies may want to institute a policy that requires a board member to return business-related records at the end of his or her term to enable the housing management body to comply with the FOIP Act.

10. Does the FOIP Act still apply to health information held by housing management bodies since the *Health Information Act* came into effect in April 2001?

- Yes. The *Health Information Act* applies only to health information held by health care bodies such as regional health authorities, physicians' offices, pharmacies and laboratories. Health information held by housing management bodies is still covered by the FOIP Act.

11. Who is an "employee" under the FOIP Act?

- The definition of "employee" in the FOIP Act includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body (**section 1(e)**). This means that volunteers, students on work experience arrangements, contractors, and appointed board members have the same responsibility to protect privacy as other employees of the housing management body.

12. Are records of contractors subject to the FOIP Act?

- The definition of "employee" in the FOIP Act includes a person retained under contract to perform services for the public body (**section 1(e)**).
- A record may be under the control of a housing management body where a contract permits the housing management body to inspect, review or copy records produced, received or acquired by a contractor.
- Often housing management bodies have contracts with an organization to provide some kind of service to individuals. Services such as meal preparation or janitorial services may be provided through contracts. The contractor is functioning in the place of the housing management body; the records the contractor creates are subject to the same privacy and access rules as records of the housing management body. As a result, contracts need to include privacy protection clauses, as well as clarity on control of and access to records.
- The *Managing Contracts under the FOIP Act, A Guide for Government of Alberta Contract Managers and FOIP Coordinators* addresses these issues in detail and may be referred to for more information.

13. Who is responsible for FOIP within a housing management body?

- The governing body of the housing management body (the board) must designate a head by resolution under **section 95(a)**. The head is responsible and accountable for all decisions taken under the Act.
- The head can be an individual (e.g. chief administrative officer) or the board.
- Appointing the board or a committee as the head could present practical difficulties in meeting the timelines for responding to FOIP requests or in defending a complaint to the Information and Privacy Commissioner.
- Once the head is designated, the head can delegate any of his or her responsibilities, except the ability to delegate, in writing under **section 85** of the Act.

14. How can housing management bodies ensure consistency in dealing with similar records?

- Each housing management body must apply the FOIP Act for itself, although it may seek advice from various sources, including those listed on the last page of these questions.
- You may wish to consult with other housing management bodies to find out how they are handling similar records.

15. Does a housing management body have any control over how records that have been released in response to a FOIP request are used by the applicant?

- No. A housing management body does not have any control over the use of information once it is released to an applicant.

EMPLOYEE AND BOARD MEMBER INFORMATION

16. If a housing management body receives a FOIP request for the salaries of all employees, does the information have to be released?

- Under **section 17(2)(e)** of the FOIP Act, disclosing the salary range and discretionary benefits of employees is not an unreasonable invasion of privacy. For most employees, the exact salary could be released only with an employee's consent.
- Section 11(3) of the Management Body Operation and Administration Regulation requires a housing management body to disclose the salaries of board members, the chief administrative officer, and any other officers designated by the board for the purposes of this subsection. This information could therefore be released, under **section 17(2)(c)** of the FOIP Act, if a request was made.

17. Can a housing management body give out the names and addresses of its board members?

- There is an expectation that contact information will be available for people who sit on a public board. Board members can decide what contact information they wish to provide.
- Board members should be notified of why their personal information (e.g. name, phone number) is being collected, how it will be used, and to whom it will be disclosed. Information may then be released accordingly.

18. Can the housing management body disclose personal information of employees, such as salary, benefits, or home addresses, to board members?

- Personal information of employees can be disclosed to a board member if the information is necessary for the performance of the duties of the board member (**section 40(1)(h)**).
- Only the information which the board member needs to know can be disclosed (**section 40(4)**). For example, in a housing management body with a small number of employees, board members may need to receive information on individual employees' salaries as part of the budget process, depending on how the budget is normally prepared. In a larger housing management body, budget

decisions may be made on summary information, so in that case individual salaries would not need to be disclosed.

19. If a housing management body receives a FOIP request for the severance package given to an employee, does the information have to be released?

- 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)**).
- In *Order F2003-002*, the Commissioner's Office applied the same reasoning to records related to supplementary pension agreements.
- 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.

20. If a housing management body receives a FOIP request for a travel expense claim of an employee or board members, does the information have to be released?

- Expense claims have frequently been the subject of FOIP requests.
- Under **section 17(2)(e)** of the FOIP Act, disclosing employment responsibilities of employees is not an unreasonable invasion of privacy. Travel for business purposes is part of an employee's employment responsibilities.
- Expense claim records can also be released if **section 17(5)(a)** applies, where the disclosure is desirable for the purpose of subjecting the activities of the housing management body to public scrutiny. The records would be severed, for example, to withhold employee's credit card numbers or home address, and the names of third parties.

FEES

21. Can housing management bodies charge fees for handling FOIP requests?

- **Section 93** of the FOIP Act, and **sections 10 to 14** and **Schedule 2** of the FOIP Regulation set out when fees may be charged for processing FOIP requests.
- **Section 95(b)** of the FOIP Act says that a housing management body may, by resolution, set any fees it requires to be paid under **section 93** as long as they don't exceed the fees provided for in the regulations.

22. What fees can be charged for handling a request for an individual's own personal information?

- Applicants are not required to pay an initial fee when requesting access to their own personal information.
- Fees may only be charged for producing a copying the records (items 3 to 6 of Schedule 2), and then only when those fees exceed \$10. When the estimated cost exceeds \$10, then the total amount is charged.
- Applicants may request that the fees be waived if the applicant cannot afford payment or if for other reasons it is fair to excuse payment. These requests should be considered on a case-by-case basis.

23. What fees can be charged for handling a request for other records, i.e. an access request?

- Applicants are required to pay an initial fee of \$25 for a one-time request, or \$50 for a continuing request, before processing of the request will begin.
- When the estimated cost of processing the request exceeds \$150, then the total amount is charged. When the estimated cost is less than \$150, then no fee above the \$25 initial fee is charged to the applicant.
- Housing management bodies can charge for the time to search, locate and retrieve a record; to prepare the record for disclosure (severing the record); copying costs; computer processing and programming costs; the cost of supervising an applicant who wishes to examine an original record; and shipping costs.
- Preparing a record for disclosure does not include the time the housing management body takes to decide or discuss what will or will not be severed.
- An applicant may request that the fees be waived if the applicant cannot afford payment or for other reasons if it is fair to excuse payment. These requests should be considered on a case-by-case basis.

24. Should housing management bodies collect GST on FOIP fees?

- No. Canada Revenue Agency does not require housing management bodies to collect GST on fees paid for handling a FOIP request.

25. Should housing management bodies follow the FOIP fee schedule when releasing records outside of the FOIP Act?

- No. The FOIP Act does not replace existing procedures for access to information or records, and does not change the fees housing management bodies may be charging for these services. This is in **section 3** of the FOIP Act.

OPERATING PROGRAMS

26. When can a housing management body collect personal information?

- **Section 33** of the FOIP Act sets out three circumstances when a housing management body can collect personal information:
 - when collection is authorized by or under an Act of Alberta or Canada,
 - when the information is collected for law enforcement, or
 - when the information relates directly to and is necessary for an operating program or activity of the public body.

- Housing management bodies should examine information presently being collected to ensure that it fits within these categories. Unnecessary or unauthorized information should no longer be collected.
- When collecting personal information directly from an individual, you must notify the individual of the purpose for which you're collecting the information, the authority you have to collect it, and who to contact with any questions (**section 34(2)**).

27. Can a housing management body indirectly collect personal information about individuals?

- Normally personal information has to be collected directly from the individual it is about.
- **Section 34** lists some circumstances where it is permissible for a housing management body to obtain information indirectly, for instance:
 - if the individual consents (e.g. a job applicant consents to letting you check references).
 - if an enactment permits indirect collection (e.g. the Social Housing Accommodation Regulation allows income verification).
 - to determine eligibility for a program (e.g. social housing).
 - in a health or safety emergency.

28. Can housing management bodies verify individuals' income to determine their eligibility for social housing or lodge accommodation?

- Yes. The information can be collected under **section 33** of the FOIP Act. **Section 33(c)** allows housing management bodies to collect information that is necessary for a program of the housing management body.
- Under **section 33(a)**, a housing management body can collect any personal information which it is authorized to collect under another Act. This covers information collected under the authority of the Social Housing Accommodation Regulation which housing management bodies use to determine eligibility for housing.
- **Section 34(1)(k)** allows this information to be collected indirectly if necessary.

29. Can the name of a tenant who is in arrears be disclosed to the Board of a housing management body?

- The name could be disclosed for the purpose of assisting with the collection of a debt owing to the housing management body (**section 40(1)(k)**) or for the purpose of determining continuing eligibility for housing (if maintaining an account in good standing is a requirement for eligibility for housing) (**section 40(1)(l)**). Also, if the disclosure of this information was necessary for the performance of the duties of a board member, the name could be disclosed under **section 40(1)(h)**.

30. Can a housing authority continue to post eviction notices, in accordance with the *Residential Tenancy Act*?

- Yes. A housing authority may disclose personal information for the purpose of complying with an enactment of Alberta or Canada according to **section 40(1)(e)** of the FOIP Act.

- If a landlord is unable to serve a person referred to in section 30(1) or 33(1) of the *Residential Tenancy Act*, by reason of the person's absence or the person's evading service, service may be effected by posting the notice in a conspicuous place on some part of the premises in accordance with section 57(4) of the *Residential Tenancy Act*.

31. Can a housing management body give a reference for a former tenant?

- Yes, but only with the tenant's consent. Financial history of a tenant is the tenant's personal information and so consent is required before you can disclose it.

32. Can a housing management body release personal information about a tenant to the tenant's relatives?

- Tenant's relatives are, in general, treated no differently than anyone else under the FOIP Act.
- If no written FOIP request is made, **section 40** governs what can be disclosed. For example, information can be released if the tenant consents, if the information is already public, or if it would not unreasonably invade anyone's privacy. Also, **section 40** allows disclosure so that a friend or relative can be contacted if the tenant is injured, ill or deceased.
- If a FOIP request has been made, the exceptions under **Part 1** of the FOIP Act must be considered in determining what records to release. Also consider who is making the FOIP request. Under **section 84**, others, for instance a guardian or trustee, may be authorized to act on behalf of the tenant. If this is the case, then information about the tenant would be released to the person acting on the tenant's behalf. Otherwise, much of the information in the records would be withheld under **section 17**, if its disclosure would unreasonably invade the privacy of the tenant.

33. Can housing management bodies provide personal information of a lodge resident to ambulance staff?

- Health information can be disclosed to an ambulance attendant under **section 40(1)(c)** of the FOIP Act if it was collected for the purpose of ensuring the resident's welfare. Health information about a resident can also be disclosed under **section 40(1)(ee)** if there is imminent danger to the resident's health or safety, and the information would reduce the danger.
- Only the information the ambulance attendant needs to know to provide proper care should be released (**section 40(4)**).

34. Can the names of staff or clients be disclosed to the local police?

- Yes, when the police are investigating a particular incident or the possibility that a criminal offence has been committed, the disclosure of personal information of a staff member or a client is permitted under **section 40(1)(q)**. The Law Enforcement Disclosure Form in Appendix 5 of the *FOIP Guidelines and Practices* manual can be used for this purpose.

35. Can a housing management body disclose personal information to Alberta Justice Maintenance Enforcement Program?

- Yes. **Section 40(1)(y)** permits the disclosure of personal information about individuals for the purposes of enforcing a maintenance order under the *Maintenance Enforcement Act*. If this is the basis for requesting the information, the official for Maintenance Enforcement would have to provide proof of identity and specific authority under which the information is being requested.
- Housing management bodies should only disclose the personal information necessary to the enforcement process relating to the order.

36. If a housing management body receives a FOIP request for records about a complaint made about an individual, for example, a complaint about noise, does the housing management body have to release the name of the complainant?

- Not necessarily. The housing management body would need to weigh several factors, including whether the name of the complainant would harm a law enforcement matter or would be an unreasonable invasion of the privacy of the complainant.
- The Information and Privacy Commissioner, in *Order 96-010*, upheld a public body's decision not to disclose the name of a person who expressed a concern about another individual's ability to drive. In this case, the confidentiality of the informant prevailed over the right of the individual's right to know the informant's identity.

37. If a housing management body received a complaint about an individual, for example, a staff member, would the housing management body release the name of the complainant to the individual?

- In these situations, it may be necessary to disclose the name of a complainant so that the matter can be resolved. For example, a supervisor cannot investigate a complaint against an employee without describing the complaint to the employee. Even if the name of the complainant is not released, the circumstances may identify the complainant.
- In such situations, the complainant should be advised that, in order to resolve the situation, it may be necessary to disclose their name or other identifying information.

38. If a housing management body receives a FOIP request for copies of contracts with consultants, engineers or other contractors, would the housing management body release the records?

- Not entirely. Copies of contracts can be disclosed after they have been awarded on the premise that the public has the right to know who has been engaged to do work for the housing management body and how much is being paid for the work. For instance, the total amount paid under a contract would be releasable.
- However, some information in the contract, or in supplementary documentation, must be withheld if it meets the three-part test in **section 16** for harm to business interests of the contractor.
- Information may also be withheld if the housing management body can show that its disclosure could reasonably harm its economic interests, result in financial loss or interfere with negotiations (**section 25**).

- Examples of information that might be withheld include unit pricing, actual wages paid to employees of the contractor, or proprietary information (e.g. trade secrets).
- The *Contract Manager's Guide*, addresses these issues in detail and may be referred to for more information.

39. 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.
- Housing management bodies are required to compile and maintain a list of their PIBs to have available at their offices, and provide to the public upon request.
- Refer to the publication entitled *Guide to Identifying Personal Information Banks* for more information.

For more information contact:

► **[Your Housing and Urban Affairs FOIP Coordinator](#)**

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