



Fund-Raising

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INTRODUCTION

To enhance programs and services to their communities, many local public bodies, including hospitals, universities, colleges, and public libraries, pursue fund-raising activities. These activities often involve approaching current and former clients, as well as members of the public and businesses, for donations. Lists of prospective donors and donor profiles are often compiled to help direct fund-raising activities effectively.

Many local public bodies operate fund-raising programs directly, through one or more fund-raising or “development” offices. In some cases, the local public body may engage a professional fund-raising organization to provide services on behalf of the local public body, under its direction. In both of these cases, records in the custody or under the control of the public body are subject to the *Freedom of Information and Protection of Privacy Act* (the FOIP Act).

In other cases, an arm’s length organization raises funds for the local public body; for example, a “foundation” or “friends,” or, in the case of a post-secondary institution, an alumni association. These bodies may be subject to Alberta’s *Personal Information Protection Act* (PIPA). Unless there is a contract or agency relationship between the local public body and the organization, the organization’s records will likely be subject to PIPA. The law governing PIPA organizations is beyond the scope of this publication.

Fund-raising is also subject to Alberta’s *Charitable Fund-Raising Act*. That Act applies to solicitations by a fund-raising business and solicitations made by a charitable organization that raises, or intends to raise, gross contributions of \$25,000 or more in a financial year. The application of the *Charitable Fund-Raising Act* to fund-raising on behalf of public bodies is also outside the scope of this Bulletin.

The purpose of this Bulletin is to explain the provisions of the FOIP Act that govern fund-raising by public bodies, including the limitations that apply, and to propose some best practices for fund-raising.

Publications produced by Access and Privacy, Service Alberta, cited in this Bulletin are available on the FOIP website at foip.alberta.ca. Decisions, practice notes and publications issued by the Office of the Information and Privacy Commissioner of Alberta may be found on the OIPC website at www.oipc.ab.ca.

HOW THE FOIP ACT APPLIES TO FUND-RAISING

Part 2 of the FOIP Act contains the privacy protection provisions of the Act. These provisions, which are based on longstanding “fair information principles,” govern the collection, use and disclosure of personal information, the accuracy and retention of personal information, the right to correct personal information, and the protection of personal information against unauthorized access and other risks.

In this Bulletin consideration will be given to both the general provisions of the Act and the provisions of the Act that relate specifically to fund-raising. “Fund-raising” is understood to mean the organized activity of raising funds for a particular institution, project or cause.

COLLECTION OF PERSONAL INFORMATION

A public body may collect personal information only if the collection is authorized by **section 33** of the FOIP Act. A public body that engages in fund-raising is likely to rely on **section 33(c)** of the Act. This provision permits the collection of personal information if the information relates directly to and is necessary for an operating program or activity of the public body.

To rely on **section 33(c)** for the legal authority to collect personal information for fund-raising purposes, the public body must have a formal program that is authorized in the way that the public body authorizes similar programs. The program may be ongoing or it may be related to a short-term fund-raising campaign, such as a campaign associated with a special institutional anniversary. The information collected for fund-raising purposes must be limited to what is necessary for the program or for the specific fund-raising activity, as applicable.

INDIRECT COLLECTION OF PERSONAL INFORMATION FROM PUBLISHED OR OTHER PUBLIC SOURCES

The FOIP Act generally requires public bodies to collect personal information directly from the individual the information is about, and to provide the individual with notice of the purpose of the collection (**section 34**). There is an exception for information that is collected from published or other public sources for the purpose of fund-raising (**section 34(1)(f)**).

“Published sources of information” means information that is issued by a publisher, including a company that produces and distributes books and newspapers, but also by a publisher that distributes information only in electronic form, most commonly on a website.

Examples of published sources would be

- biographical dictionaries, such as *Who’s Who in Canada* and the *Canadian Parliamentary Guide*
- corporate reports of public companies
- books, periodicals and magazines
- audiotapes or videotapes of public broadcasts
- newspaper reports
- birth, marriage and obituary notices

Most of this information would be readily available in a public library or in a research or special library of a public body or private sector organization.

It is a standard practice for fund-raising programs to have an agreement with a service provider that monitors specific information sources for information about particular individuals or their families. An agency can collect the information on the public body’s behalf as long as the information falls into the category of “published sources of information.”

“Public sources of information” means information that is made available to the public at large in any medium. The information may not be routinely made available; it may be of a kind that can be made available on demand, for example, through a search of a database or making a request for a public record, as in the case of certain classes of court records. The information may be made available free or for a fee.

Examples of public sources of information include:

- websites accessible to the public
- information in reports of charitable groups filed either with the federal or provincial government
- information in a public registry
- biographical information considered by a public body in a meeting open to the public
- a speech given at a public event
- information about honours or awards granted by or through a public body
- a record of an individual's attendance at a public event or activity, such as a graduation ceremony (e.g. a program, not a note that an individual was observed at the event)
- donor lists printed in programs for public events, such as cultural or sporting events

“Published or other public sources of information” would not include the following kinds of information:

- original source material for books or periodical or magazine articles
- background information or notes gathered by a newspaper reporter and not included in a published story
- a curriculum vitae or resumé in the custody of a public body that was collected for employment purposes
- information provided in confidence to a public body for consideration in providing an honour or award
- information provided by members of a governing board or employees of the public body based on personal acquaintance or observation
- information that could be gathered only through surveillance or from private sources, even if this is available to members of the public for a fee
- patient information in a hospital
- next-of-kin or emergency contacts for nursing home or seniors' lodge residents

- names and addresses of parents of children in a school or post-secondary program

The FOIP Act does not require public bodies to notify individuals about the collection of personal information when the information is collected indirectly (**section 34(2)**). However, a public body may choose to inform its clientele about its practices in a general way through its publications, website and notices in its offices.

Whether or not notice is provided, a public body that maintains a collection of personal information must include information about the collection in its directory of personal information banks, including

- the title and location of the personal information bank,
- a description of the kind of personal information and the categories of individuals whose personal information is included,
- the authority for collecting the personal information, and
- the purposes for which the personal information was collected or compiled and the purposes for which it is used or disclosed (**section 87.1**).

ACCURACY AND RETENTION

If personal information will be used by a public body to make a decision that directly affects the individual, the public body must make every reasonable effort to ensure that the information is accurate and complete (**section 35(a)**).

“A decision that directly affects the individual” includes a decision to take an action that will result in direct contact with an individual, such as placing an individual on a mailing list for a fund-raising publication or on a calling list of prospective donors.

A public body makes “every reasonable effort” to ensure that information is accurate and complete when it is thorough and comprehensive in identifying practicable means to ensure accuracy and completeness. The Information and Privacy Commissioner has stated that **section 35(a)** requires that a public body take *positive steps* to ensure that the personal information is accurate and complete before

using the personal information to make a decision (*Order 98-002*).

When a public body collects personal information directly from an individual it is likely that the information will be accurate and complete. This is less likely to be the case when information is collected from other sources. A public body that is collecting information from published or other public sources has an obligation to take measures to ensure that its information is accurate and complete by choosing reliable, authoritative sources of information.

The FOIP Act requires public bodies to retain personal information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it (**section 35(b)**). An individual who received a telephone solicitation, for example, could request access to his or her file in the fund-raising office.

An individual who believes there is an error or an omission has the right to request correction of personal information containing an error or omission (**section 36**).

USE OF PERSONAL INFORMATION

The general principle respecting use of personal information in the FOIP Act is that a public body may use personal information

- for the purpose for which the information was compiled or for a use consistent with that purpose (**section 39(1)(a)**), or
- with the individual's consent (**section 39(1)(b)**).

Use without consent

A public body that collected personal information – for example, personal information about a prospective major donor – specifically for the purpose of fund-raising, and collected the personal information from published or other public sources (**section 34(1)(f)**), may use the information, without consent, for fund-raising purposes. Use of the information must be limited to what is necessary to enable the public body to carry out its purpose in a reasonable manner (**section 39(4)**).

The public body may not use personal information that was collected specifically for fund-raising purposes for other unrelated purposes, such as recruiting to honorary positions within the public body. Public bodies should clearly identify information collected for fund-raising purposes in their records and allow access only by those employees engaged in fund-raising and fund development activities.

Use with consent

Public bodies that operate fund-raising programs often rely on donations from current or former clients. They also often have personal information on file that was collected for providing services to the client. If fund-raising is not the purpose for which a public body has collected personal information, the public body is likely to have to obtain consent to use personal information in its files for the purpose of fund-raising. Consent must be given in the manner set out in **section 7** of the FOIP Regulation. Information about obtaining consent electronically or orally is provided in FOIP Bulletin No. 17: *Consent and Authentication*, produced by Access and Privacy, Service Alberta.

There are a number of ways of seeking an individual's consent. For example, a public body may request consent to use information in its files for fund-raising purposes at the time of a particular transaction, such as when a library patron renews an annual membership. Alternatively, a public body that is conducting a public event for fund-raising purposes may have donor forms available at the event; an individual may use the form to consent to the use of specified personal information in the public body's records for fund-raising.

The FOIP Act does not have any general provision for modification or withdrawal of consent. However, it is recommended that any public body with a fund-raising program allow individuals to request that their names be removed from contact lists. This is one of the requirements of all private-sector privacy legislation in Canada and a key provision in the code of ethics of the Association of Fund-Raising Professionals.

Use of alumni information by post-secondary educational bodies

An exception to the general rules regarding the use of personal information in the FOIP Act is that a post-secondary educational body may use personal

information in its alumni records for the purpose of its own fund-raising activities (**section 39(2)**).

This provision permits a university, public college, technical institute or the Banff Centre to use information in the records of students who have completed a program of the post-secondary educational body. The information may be used for the purpose of fund-raising for the institution or a special project of the institution, such as a new building, a special purchase, a student prize, or the endowment of a Chair.

Section 39(2) does not allow the use of alumni records for purposes that do not fall within the scope of the institution's own fund-raising. For example, this provision would not permit marketing of the institution's programs and services, or mailing out fund-raising material on behalf of another public body or private-sector organization. (A post-secondary institution would require consent for these purposes.)

The post-secondary educational body may use only the information necessary to enable the fund-raising to be carried out in a reasonable manner (**section 39(4)**). It may be reasonable to use information about enrolment, such as an individual's faculty, department or program and year of graduation. It would *not* be reasonable to use information regarding grades or disciplinary matters.

This special provision for use of personal information is subject to the condition, set out in **section 39(3)**, that a post-secondary educational body must, when requested to do so by an individual, discontinue using that individual's personal information under **section 39(2)**.

The post-secondary should bring to the notice of alumni that they may request discontinuation of the use of their personal information for fund-raising purposes. This may be done in a notice in an alumni publication or in an oral notice given at the time of telephone solicitation, for example. To comply with such requests, a fund-raising program must have some means of tracking the requests and responding in a timely way.

While the FOIP Act permits the use of alumni personal information for fund-raising purposes without consent, it is recommended as a best practice that post-

secondary educational bodies obtain consent at the earliest opportunity; for example, at the time of graduation.

DISCLOSURE OF PERSONAL INFORMATION

The guiding principle respecting disclosure of personal information in the FOIP Act is that a public body may disclose personal information

- for the purpose for which the information was collected or compiled or for a use consistent with that purpose (**section 40(1)(c)**), or
- with consent (**section 40(1)(d)**).

A public body that collected personal information – for example, personal information about a prospective major donor – specifically for the purpose of fund-raising, and collected the personal information from published or other public sources (**section 34(1)(f)**), may disclose the information without consent for fund-raising purposes. Disclosure is subject to the condition that it must be limited to what is necessary to enable the public body to carry out its purpose in a reasonable manner (**section 40(4)**).

The public body may not disclose personal information that was collected for fund-raising purposes for other unrelated purposes, such as marketing the programs of the public body, unless the individual consents or the disclosure is permitted under some other provision of **section 40(1)**.

Disclosure of alumni information by post-secondary educational bodies

An exception to the general rules regarding disclosure in the FOIP Act is that a post-secondary educational body may disclose personal information in its alumni records for the purpose of fund-raising activities of the post-secondary educational body, subject to certain conditions (**section 40(2)**).

This provision is intended to allow post-secondary educational institutions, such as universities and colleges, which generally have a continuing relationship with their alumni, to disclose alumni information to an arm's-length body, such as a

“friends” organization or an “alumni association,” for the purpose of raising funds for the post-secondary.

The arm’s length body may not use the information for fund-raising on its own behalf. For example, if an alumni association wanted to raise funds to purchase a special gift for an office-holder in the association, that would likely not be considered a fund-raising activity of the post-secondary educational body.

Any disclosure under **section 40(2)** must be limited to the information necessary to enable the public body to carry out the fund-raising purpose in a reasonable manner (**section 40(4)**). It may be reasonable to use information about enrolment, such as an individual’s faculty, department or program and year of graduation. It would not be reasonable to use information regarding grades, health or disciplinary matters.

Section 40(2) imposes conditions upon the post-secondary educational body. This provision permits the disclosure of personal information, without consent, subject to the condition that the post-secondary and the person to whom the information is disclosed must enter into a written agreement

- that allows individuals a right of access to personal information that is disclosed about them under this provision (**section 40(2)(a)**), and
- that provides that the person to whom the information is disclosed must discontinue using the personal information of any individual who so requests (**section 40(2)(b)**).

Personal information in the records can be disclosed only to a “person” for the purpose of fund-raising for the post-secondary educational body. The word “person” in this context means a legal entity capable of entering into an agreement.

The requirement to have an agreement does not apply in all circumstances where there is a transfer of personal information for the purpose of fund-raising. **Section 40(2)** applies only to arm’s length transfers of personal information.

Agreement under section 40(2) not required

Section 40(2) is intended for situations where a post-secondary educational body wants to disclose information about alumni to a *separate* body. The

provision is not intended for situations where there is a transfer of information to an office that is *part of* the post-secondary educational body. In these cases, it is advisable to have an information-sharing agreement to govern the transfer of personal information from, for example, the office of the registrar, or the faculty office, to the office of an alumni association. An agreement ensures that each office understands the terms on which the information is transferred. However, an agreement would not be required under the FOIP Act.

Section 40(2) is also not intended to apply to situations where there is a transfer of information to a person providing services to the post-secondary under a contract or agency relationship. In this situation, the post-secondary would retain control of the information and be responsible for the information for the purposes of the FOIP Act.

Post-secondary educational bodies should follow best practices for privacy protection when contracting for services involving the collection, use, disclosure, and storage of personal information. Particular attention should be given to ensuring that personal information that is transferred to a professional fund-raiser is used only for raising money for the post-secondary educational body. However, a post-secondary that engages a professional fund-raiser to act on its behalf is not required to enter into an agreement that meets the requirements of **section 40(2)**.

Agreement under section 40(2) required

Where disclosure is to a separate body that operates independently of the post-secondary, an agreement that meets the two conditions in **section 40(2)** is required. The agreement must provide for a right of access and discontinuation of the use of personal information on request. If a post-secondary educational body wishes to disclose personal information to an unincorporated association, which is not legally a “person,” it is recommended that the agreement be signed by an individual as a “representative person.” Post-secondaries in this position should consult a legal advisor.

The content of the agreement will depend on the circumstances. For example, the right of access to the information may be provided by either the post-secondary or the entity to which the information was

disclosed. A factor in the decision may be whether the post-secondary is disclosing to an entity that is subject to its own privacy legislation.

For example, if a post-secondary were disclosing personal information to an organization that was fully subject to *Alberta's Personal Information Protection Act* (PIPA), that Act would provide individuals with a right of access to their own personal information and the agreement could simply refer to the access provisions of PIPA.

If the post-secondary were disclosing personal information to a non-profit organization to which PIPA does not apply, the agreement would have to include a process for providing a right of access. If the agreement required the post-secondary to provide the right of access, the post-secondary could follow the same procedures as it follows when providing access under the FOIP Act. However, an individual requesting access would not have the right to request a review by the Information and Privacy Commissioner of any decision of the post-secondary.

Whatever approach is chosen, responsibility for providing the right of access should be clearly set out in the agreement.

A request to discontinue use of personal information could be made to either the post-secondary that disclosed the information or the entity that is using the information.

The agreement must have a provision for discontinuation of the disclosure of an individual's personal information that makes it clear

- how, and within what time period, requests for discontinuation will be processed by each of the parties to the agreement, and
- how, and within what time period, an individual's personal information is removed from a list in current use.

To be effective, the agreement should include a clause that sets out consequences for improper use or disclosure of personal information after there has been a request for non-disclosure.

Consideration should also be given to including a clause in the agreement that would require the entity using the alumni information to inform alumni that they may request discontinuation of the use of their personal information. Methods of informing alumni of this right include one or more of the following:

- publishing a notice in the alumni newsletter
- notifying individuals in the course of an address list update
- putting an opt-out link in a mass e-mail
- including a page with this information on the association website, with a form for individuals to send if they wish to request discontinuation of the use of their personal information for fund-raising

The post-secondary educational body should also consider clauses for the general protection of personal information, especially in cases where the alumni association is not subject to its own privacy legislation.

It is recommended that an agreement between the post-secondary and the alumni association prohibit secondary disclosure without the consent of the individual. For example, alumni associations often have arrangements with credit card companies whereby alumni can enrol in an affinity program and royalties are paid to the alumni association, or directly to the post-secondary educational body. It is recommended that the alumni association clearly establish that any arrangement with a credit card company requires

- that the association obtain the individual's consent before disclosing his or her personal information to the credit card company, or
- that the association, and not the credit card company, send out the offer.

Currency

This Bulletin takes into consideration decisions issued by the Office of the Information and Privacy Commissioner of Alberta up to December 31, 2008.

Purpose

FOIP Bulletins are intended to provide FOIP Coordinators with more detailed information for interpreting the *Freedom of Information and Protection of Privacy Act*. They supply information concerning procedures and practices to assist in the effective and consistent implementation of the FOIP Act across public bodies. FOIP Bulletins are not a substitute for legal advice.

Further Information

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