

Frequently Asked Questions for Metis Settlements

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 municipalities, Metis settlements, improvement districts, special areas, regional services commissions, housing management bodies, public libraries, police services, police commissions, drainage and irrigation districts, and certain boards, committees, etc. of these local government bodies.
- A Metis settlement is one established under the *Metis Settlements Act*.

2. Which local government boards, committees, etc. are subject to the FOIP Act?

- **Section 1(i)(xii)** of the FOIP Act sets out the test for whether a local government agency is subject to the FOIP Act. This test should be applied to determine if Strategic Training Initiatives Societies and other Metis corporations are subject to the FOIP Act.
- To determine whether an entity is covered, ask the following questions:
 - Is the entity a board, committee, commission, panel, agency or corporation?
 - Is it created or owned by a local government body?
 - Are all of its members/officers appointed or chosen by the local government body?
- If the answer to all three questions is "yes", then the entity is subject to the FOIP Act.

RECORDS

3. 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 Metis settlement.

- Not all records need to be kept by Metis settlements. You can routinely discard transitory records, those that have only short-term, immediate or no value to your organization and that you won't need again in the future. For more information about transitory records see the guide entitled *Official and Transitory Records: A Guide for Government of Alberta Employees* available at www.im.gov.ab.ca.
- If the information in a record will have some future administrative, financial, legal, research or historical value to the Metis settlement, 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.

4. What records of Metis settlements are subject to the FOIP Act?

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

5. How long should a Metis settlement keep its paper/electronic records?

- There is no simple answer to this question. Each settlement should establish records retention and disposition schedules or a retention bylaw for its records, including electronic and transitory records.
- A records retention and disposition schedule is a document that identifies and describes records, and indicates the length of time they shall be retained as active before transfer to semi-active storage; the length of time they should be retained as semi-active prior to final disposition; and the final disposition of the records.
- The FOIP Act allows the destruction of records in accordance with your records retention bylaw. If a settlement does not have such a bylaw, the Act allows destruction as authorized by the council (**section 3(e)(ii)**).
- Under **section 53(1)(a)**, the Information and Privacy Commissioner has the power to conduct an investigation into how a settlement is managing its records. Specifically, the Information and Privacy Commissioner can check to make sure that a settlement is following any bylaw it has regarding the destruction of records.
- Metis settlements are required by section 35 of the FOIP Act to keep personal information about an individual for at least one year if that personal information has been used by the settlement to make a decision about the individual.

6. 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 settlement's records and information management program standards, and whether it has the capability of filing documents required for future use electronically. If the settlement does not have that capability, records should be printed and filed in the paper filing system.

7. 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 committee members have the same responsibility to protect privacy as other employees of the Metis settlement.

8. 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)**).
- When a Metis settlement has a contract for the provision of services and the contract permits the settlement to inspect, review or copy records produced, received or acquired by the contractor, those records may be viewed as being under the control of the settlement.
- A Metis settlement may have contracts with organizations to provide services to settlement members. Services such as assessments and utilities may be provided through contracts. The contractor is functioning in the place of the Metis settlement; the records the contractor creates are subject to the same privacy and access rules as records of the Metis settlement. 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.

9. Are records of councillors of Metis settlements excluded from the FOIP Act?

- Personal or constituency records of a council member are excluded from the Act (**section 4(1)(m)**).
- Examples of "personal" records would be:
 - private correspondence of an elected official that has not been sent or received by the official in his or her capacity as a council member but which may be maintained in his or her office for convenience;
 - records relating to the private business activities of a council member;
 - records relating to a council member's private life such as appointments in a diary or calendar that is also used for business appointments.
- Examples of "constituency" records would be:
 - Records relating to the election campaign of a council member (other than those records required to be submitted to the authority governing the election).

- Records dealing with the business of the Metis settlement are covered by the Act even if they are stored at a councillor's home.

10. Does the FOIP Act apply to records, which, are at the residences of former settlement council members?

- These records should not be treated any differently than records of current settlement council members. See questions [3](#) through [8](#) above.
- Metis settlements have control over records relating to the business of the settlement, even if they are at the home of a former settlement council member. Thus, these records are still subject to the FOIP Act.
- Metis settlements may want to institute a policy that requires settlement council member to turn over to council any records related to council business that they may have at the end of their terms.

11. Who is responsible for FOIP within a Metis settlement?

- The governing body of the Metis settlement (the council) 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. settlement administrator, member of council, or someone else responsible to the council) or the council or one of its committees.
- Appointing council 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 in writing, under **section 85** of the Act (except the ability to delegate).

12. Does the FOIP Act still apply to health information held by Metis settlements, 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 Metis settlements is still covered by the FOIP Act.

13. Does a Metis settlement have any control over how records that have been released in response to a FOIP request are used by the applicant?

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

EMPLOYEE AND COUNCILLOR INFORMATION

14. If a Metis settlement receives a FOIP request for the salaries of all employees and councillors, 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 only be released with an employee's consent.

- There is no requirement under the *Metis Settlements Act* to disclose the exact remuneration of councillors, although the range of remuneration (if there was one) could be disclosed as above. In the absence of a settlement bylaw requiring this kind of disclosure, it would be presumed to be an unreasonable invasion of a councillor's personal privacy and would not be disclosed, without consent.

15. Can the Metis settlement administrator disclose personal information of employees, such as salary, benefits, or home address, to council members?

- Individually identifiable information of employees should not be available to council members on a routine basis.
- However, this information may be disclosed to a council member if the information is necessary for the performance of the duties of the council member (**section 40(1)(h)**) as an officer of the settlement.
- Only the information, which the council member needs to know, should be disclosed (**section 40(4)**). For example, in a Metis settlement with a small number of employees, council 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 Metis settlement, budget decisions may be made on summary information, so in that case individual salaries would not need to be disclosed.

16. If a Metis settlement receives a FOIP request for a travel expense claim of an employee or councillor, 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 may also be released if **section 17(5)(a)** applies, if the disclosure is desirable for the purpose of subjecting the activities of the Metis settlement to public scrutiny. The records might need to be severed, for example, to withhold an employee's credit card numbers or home address, and the names of third parties.

17. If a Metis settlement 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)**).
- 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.

18. Can a Metis settlement 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.
- Metis settlements should only disclose the personal information necessary to the enforcement process relating to the order.

FEES

19. Can Metis settlements 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 Metis settlement may, by bylaw, set any fees it requires to be paid under **section 93** as long as they don't exceed the fees provided for in the regulation.

20. 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.
- An applicant 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.

21. What fees can be charged for handling a request for access to other general records?

- 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.
- Metis settlements 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 Metis settlement 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.

22. Should Metis settlements collect GST on FOIP fees?

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

23. Should Metis settlements 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 Metis settlements may be charging for these services. This is in **section 3** of the FOIP Act.

COLLECTION, USE AND DISCLOSURE OF MEMBERSHIP INFORMATION

24. Can a Metis settlement check whether an individual has treaty Indian status?

- Yes, if this is for the purpose of determining or verifying eligibility for membership, as part of the application process. One of the eligibility criteria for membership, under section 75(1) of the *Metis Settlements Act* (MSA), is that an individual not be registered under the *Indian Act* (Canada). Also, section 76 of the MSA requires proof of Metis identity for the membership application process. Therefore, **section 34(1)(n)** of the FOIP Act would permit the indirect collection of Treaty Indian status information to determine the individual's eligibility for settlement membership.

25. Can a Metis settlement council review membership applications at a public meeting?

- No it cannot. Unless the applicant consents, the discussion of a person's membership application during the public phase of a meeting would be an unreasonable invasion of the applicant's personal privacy under **section 17(1)** of the FOIP Act.
- All settlement council meetings are public meetings, but under section 37(1) of the MSA, a settlement council can vote to go into committee of the whole or part. In this way, it can exclude persons who are not members of the committee from the applicant discussion meeting.
- To formally accept an applicant as a new settlement member, the council is required to revert back to a public meeting for the resolution vote under section 37(2) of the MSA.

26. How should minutes of a settlement council be recorded?

- Under section 46 of the MSA, a settlement administrator is responsible for recording in the settlement council record book all resolutions, decisions and other proceedings of the council and for keeping the minutes at the settlement office. Minutes reflecting decisions reached by a council should be recorded so as to minimize the invasion of personal privacy.
- Under section 44 of the MSA, council minutes must also be posted at the settlement office for 15 days after council has adopted them. Prior to posting,

the minutes should be reviewed to determine if any exceptions under section 44(2) of the MSA apply. That section permits the settlement council to sever portions of the minutes that contain technical, commercial or confidential information the release of which could prejudice or be damaging to the settlement or any other person, or the release of which would breach information held in confidence.

27. Can someone receive information about another person's Metis settlement application?

- No. This would generally be an unreasonable invasion of personal privacy under **section 17(1)** of the FOIP Act without the individual's consent. However, the Act allows for some considerations when determining whether disclosure is an unreasonable invasion of personal privacy. One of the considerations would be whether disclosure would be desirable to subject the activities of the settlement to public scrutiny (**section 17(5)(a)**).

28. Can Metis settlement councils meet in private over land allocations? What other matters can councils discuss in private?

- Yes. Section 37(1) of the MSA authorizes a settlement council to vote to go into committee of the whole or part and while in committee to exclude persons who are not members of the committee from the meeting.
- The MSA doesn't indicate the matters that may be discussed in private so section 18 of the FOIP Regulation would apply. That section sets out the subject matter that may be considered in the absence of the public and includes: the security of property of the settlement; personal information of an individual; a proposed or pending acquisition or disposition of property; labour relations or employee negotiations; or a law enforcement matter, litigation or potential litigation.
- Resolutions and bylaws arising from the matters discussed must be voted upon in the public portion of the meeting.

29. When an individual applies for Metis title land, can the settlement council check with their finance department for debts owing?

- No. This information would not be relevant to the processing of an application for Metis title land unless the individual was requesting an upgrade from a provisional Metis title to the land.
- In that case, if the settlement council had a bylaw in place regarding the payment of user fees, the council could check with their finance department to see if the payment of user fees was up to date.

30. Can Metis settlement put members' names on maps?

- Under the Metis Settlements Land Registry Regulation, the names of persons to whom settlement land has been allocated are recorded in the Land Registry. Section 68 of that Regulation allows any person to pay a fee and examine and obtain copies of documents in the Registry. Records made from information in the Settlements Land Registry (including maps) would be excluded from the scope of the FOIP Act (**section 4(1)(I)(vii)**).

31. Can a Metis settlement administrator disclose personal information of settlement members/residents to council members?

- Section 98(d) of the MSA authorizes some disclosure of personal information of settlement members to council members on a need to know basis. Disclosure of that information would be permitted under **section 40(1)(f)** of the FOIP Act (in accordance with an Act) or under **section 40(1)(h)** of the Act (information necessary for the person to perform his/her duties as a member or officer of the settlement). Personal information of members/residents could also be disclosed with the consent of the individual.
- Only the information that the council member needs to know can be disclosed. (**section 40(4)**).

32. Can a council obtain a list of accounts receivable with names and amounts owing?

- Yes, if the council needs this to collect a debt or fine owing to the settlement (**section 40(1)(k)** of the FOIP Act); if this is necessary for them to perform their duties as a council (**section 40(1)(h)**); or, in accordance with section 98(d) of the MSA.

33. Can a Metis settlement disclose membership lists to the public?

- Section 98 of the MSA states that the Metis settlement membership lists are only available to authorized individuals and not for public use.

34. Can a Metis Settlement council confirm whether an individual is a settlement member?

- Under section 98 of the MSA, the Settlement Members List is kept confidential and is only available to authorized individuals. However, membership may be confirmed in response to a request for this information in situations that fall within the permitted disclosures in **section 40(1)** of the FOIP Act. Examples of permitted disclosures would include **section 40(1)(l)** – for determining or verifying suitability or eligibility for a program or benefit; or **section 40(1)(q)** – to a public body or law enforcement agency to assist in an investigation.

35. Can the electoral list be disclosed?

- The *Local Authorities Election Act*, which applies to Metis settlements, stipulates in section 50(3) that the electoral list is only available to candidates for the purposes of campaigning and for officers carrying out their election duties (i.e. returning officers).

36. How should the electoral list be created?

- **Section 39(4)** of the FOIP Act would allow a settlement to use the personal information of members to carry out its business in a reasonable manner. This could include compiling an electoral list.
- Under section 50(1) of the *Local Authorities Election Act*, a settlement may pass a bylaw prescribing the procedures and forms governing the enumeration of electors. Section 51 of the MSA authorizes the making of such a bylaw, and section 14 of that Act sets out the requirements for voter eligibility.

37. Can a Metis settlement collect attendance information about members from post-secondary institutions?

- This information can be collected with the consent of the member or without consent if the member's studies are being funded by the settlement and the settlement needs to determine continuing eligibility for funding (**section 34(1)(k)** of the FOIP Act). **Section 40(1)(l)** of that Act would allow a post-secondary institution to disclose that information to the settlement for that purpose. The settlement should advise the individual that information may be requested from the institution to determine their funding eligibility.
- **Section 17(2)(j)** of the FOIP Act says that confirmation of an individual's enrolment at a post-secondary institution would not be an unreasonable invasion of an individual's personal privacy but this does not apply to confirmation of attendance.

38. Can the Metis Settlements Strategic Training Initiatives Society (STI) obtain financial information on members from the Student Finance Board?

- Yes. When a settlement member applies for funding from STI, they consent to information being disclosed by the Student Finance Board to STI to determine or verify their eligibility for an STI program.

39. Are contracts and agreements between a Metis settlement and a company releasable under the FOIP Act?

- If a FOIP request is received, consider whether any of the exceptions in **sections 16 to 29** are applicable.
- It is mandatory that the Metis settlement not disclose the commercial, financial or technical information supplied in confidence that would significantly harm the business interests of a third party (**section 16**). The FOIP Act contains a process to consult with companies before releasing information they supplied to the Metis settlement.

40. If a Metis settlement receives a FOIP request for copies of contracts with consultants, engineers or other contractors, could the Metis settlement release the records?

- Under section 44 of the MSA, copies of contracts entered into by the settlement must be posted for 15 days unless the settlement council makes an exception to this. This is consistent with the premise that the public has a right to know who has been engaged to do work for the settlement and how much is being paid for the work.
- The exceptions in section 44(2) include the kinds of information that would be withheld under **section 16** of the FOIP Act. Under **section 16**, if information in the contract or in supplementary documentation meets the three-part test in **section 16** for harm to business interests of the contractor, it could not be disclosed in response to a FOIP request.
- Information may also be withheld if the settlement can show that its disclosure could reasonably harm its economic interests, result in financial loss or interfere with negotiations (**section 25**). This is also consistent with the exceptions to posting documents in section 44 of the MSA.

- 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).
- 41. Can a settlement council discuss job performance of an administrator, or other employee, at a public meeting?**
- No. This would be considered an unreasonable invasion of the administrator's personal privacy under **section 17(1)** of the FOIP Act.
- 42. If a Metis settlement receives a FOIP request for records about a complaint made about an individual, for example, a complaint made under a noise bylaw, does the Metis settlement have to release the name of the complainant?**
- Not necessarily. The Metis settlement would need to weigh several factors, including whether releasing the name of the complainant would harm a law enforcement matter, would threaten anyone else's safety or mental or physical health or would be an unreasonable invasion of the privacy of the complainant.
 - The Information and Privacy Commissioner, in *Order 96-010*, upheld Alberta Municipal Affairs' 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 individual's right to know the informant's identity.
- 43. If a Metis settlement receives a complaint about an individual, for example, a census taker or bylaw enforcement officer, would the Metis settlement 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 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.
- 44. 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 offense 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.
- 45. 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 an unique identifier, such as social insurance number, client number or employee number.
 - Metis settlements are required to have a list that describes their PIBs available at their offices, and provide it to the public upon request.

- Refer to the publication entitled *Guide to Identifying Personal Information Banks* for more information.

For more information contact:

▶ **[Your Metis Settlement's FOIP Coordinator](#)**

▶ **Metis Settlement General Council**

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