

FOIP News

Issue No. 15, March 2005



“FOIP News” is an electronic newsletter produced by the Access and Privacy Branch, Alberta Government Services, to highlight news relating to Alberta’s *Freedom of Information and Protection of Privacy (FOIP) Act*. FOIP News is issued as needed. Web site links are provided to allow you to easily obtain more information on a news item.

FOIP Act and Regulation

A new office consolidation of the FOIP Act and Regulation is available from the Alberta Queen's Printer. It includes all of the amendments to date including those made to the FOIP Regulation in the fall of 2004. To purchase the new consolidation, click on www.qp.gov.ab.ca.

Legislation Web Pages

The Legislation web page on the FOIP web site has a new look. One new section has been added and several of the existing publications have been updated.

Recent and Unproclaimed Amendments (NEW)

This new section sets out the latest and future changes to the FOIP Act and Regulation. You can also download inserts of recent amendments to update your consolidation of the FOIP Act and Regulation until you purchase an updated version from the Alberta Queen's Printer.

Legislation Paramount over the FOIP Act

This publication lists those Acts and Regulations containing provisions that prevail despite the FOIP Act.

Concordance and Legislative History of the FOIP Act

This publication tracks changes to the FOIP Act since it received Royal Assent and allows users to find out whether provisions interpreted in Commissioner's Orders have been renumbered or amended since an Order was issued.

New FOIP Publication

FOIP Bulletin No. 16, entitled ***Personal Information of Deceased Persons***, is now available in the Guidelines and Practices section of the FOIP web site. This new bulletin provides an overview of the *Freedom of Information and Protection of Privacy Act* as it relates to the personal information of deceased individuals, reviewing the general and some specific provisions that apply to deceased individuals. Bulletin No. 16 is available at www.gov.ab.ca/foip/guidelines_practices/bulletins/bulletin16.cfm.

Revised FOIP Publications

The following FOIP publications have been revised and the updated versions are available on the FOIP Web site.

- **Human Resources Guide for Local Public Bodies**
www.gov.ab.ca/foip/other_resources/publications_videos/human_resources_guide.cfm
- **Frequently Asked Questions for Municipalities**
www.gov.ab.ca/foip/faq/municipalities.cfm
- **Frequently Asked Questions for Post-Secondary Institutions**
www.gov.ab.ca/foip/faq/post_secondary.cfm
- **FOIP Bulletin No. 2: Fee Waivers**
http://www.gov.ab.ca/foip/guidelines_practices/bulletins/bulletin2.cfm
- **FOIP Bulletin No. 7: Law Enforcement**
www.gov.ab.ca/foip/guidelines_practices/bulletins/bulletin7.cfm
- **FOIP Bulletin No. 9: Burden of Proof**
www.gov.ab.ca/foip/guidelines_practices/bulletins/bulletin9.cfm

FOIP Training

The next FOIP training sessions are March 14, 15 and 16, 2005 in Edmonton, and April 20, 21 and 22, 2005 in Calgary.

In the fall of 2004, the Access and Privacy Branch introduced three new training options. The options include:

FOIP General Awareness – A half-day FOIP general awareness session designed to provide employees with a broad overview of the basic concepts of access to information and protection of privacy as well as the duties of public bodies and their employees under the Act. This session can be delivered on site or staff can attend on the scheduled sessions in Edmonton or Calgary.

On-Site Training – Any of the four FOIP courses offered in the training calendar can be delivered at your workplace. A minimum of 15 participants is required and you are responsible for providing the training room. Course fees are discounted when you have more than 15 participants attend a session. And, of course, workplace training saves your organization travel and overtime costs. If you don't have 15 participants, consider a joint venture with another public body in your area.

Customized Training – If the four FOIP courses don't quite suit your training audience, consider building a new course. Now a custom course can be designed, in consultation with the trainer, using components of the FOIP training courses available in the training calendar. This option does not allow for the development of new content not covered in the current courses. Customized training can be delivered anywhere in Alberta. You provide the training facilities and pay the trainer a daily rate and there are no minimum or maximum requirements on the number of participants that attend the training.

See the training calendar for more information about any one of these options or contact Janet Cummings at (780) 415-2407 or e-mail janet.cummings@gov.ab.ca. The training calendar and registration form are available at www.gov.ab.ca/foip/other_resources/training/.

Health Information

On October 18, 2005 the Select Special Health Information Act Review Committee released its final report. The committee received 72 written submissions and 15 oral presentations, resulting in 59 recommendations being made by the committee.

The report put forward offered 50 recommendations. The committee's recommendations cover: the purpose of the Act; definitions; the scope of the Act; health service provider information; the individual's right to access health records; collection of health information; elements of consent; discretionary disclosure without consent; disclosure to police services; the triplicate prescription program; genetic information; informed, knowledgeable and implied consent; disclosure for research purposes; duties and obligations to custodians; the Commissioner's powers; substitute decision-makers; offences and penalties; and health information regulations.

The committee recommended that a new committee be struck in 2005 to address issues that require additional research and further consultation with stakeholders.

The final report is available at www.hiareview.assembly.ab.ca.

OIPC Orders and Investigation Reports

Since the last newsletter (July 2004), the following Orders have been released by the OIPC that relate to local public bodies. The Orders themselves and summaries of the Orders are available on the FOIP Web site.

F2003-019, Grant MacEwan College (August 18, 2004)

The Information and Privacy Commissioner found that Grant MacEwan College properly refused to correct instructors' evaluations of the applicant's performance in a nursing program. The applicant failed to prove that any of the statements of fact were inaccurate and section 36(2) prohibits the correction of statements of opinion. In determining the instructors' opinions were professional opinions, the Commissioner adopted the definition of "professional" found in *The Concise Oxford Dictionary* as "...of or relating to or belonging to a profession." The College was required to link the request for correction directly to the records in question in such a manner that it would be readily apparent that a correction request had been made. It was not sufficient to simply put the correction request in the applicant's student file because the file contained a large number of records. The College was also required to notify the one organization to which it had disclosed the evaluations of the link.

F2004-006, Mount Royal College (October 6, 2004)

A third party objected to the decision of Mount Royal College to disclose certain records related to the sale or lease of the Holy Cross Hospital. The Adjudicator noted that the facilities program and space allocation report did not contain the personal or commercial information of the author. The report had been prepared by the author in his or her professional capacity and was a type of professional work routinely submitted to third parties and public authorities. The Adjudicator found that disclosure of the other records

would not be harmful to the business interests of the third party (section 16) and that the records could not be withheld under the exception for legal privilege (section 27(1)).

F2004-020, Edmonton Police Service (December 22, 2004)

The Edmonton Police Service provided evidence to the Adjudicator that demonstrated the Police Service had conducted a thorough search of its database and found no records related to the applicant.

F2004-031, City of Calgary (January 4, 2005)

The applicant made an access request for records that could be purchased by the public from the City of Calgary for \$1224. The City issued a fee estimate for \$1224 but subsequently reduced the estimate to \$556 after applying the fees in Schedule 2 of the FOIP Regulation. The Adjudicator confirmed the City's decision not to grant the applicant a fee waiver. Weighing the 13 non-exhaustive criteria, the Adjudicator found that there was no public interest in the records to justify a fee waiver. In particular, the City had reduced the fees to less than half of what the public would pay for the records and the City also could have refused disclosure of the records under section 29(1)(a.1)(exception for records available to the public).

F2003-005, University of Calgary (January 5, 2005)

The applicant requested access to all information relating to a sexual harassment complaint the applicant had made about a faculty member of the University. The Adjudicator found that neither litigation privilege nor solicitor-client privilege applied to a report prepared by an independent investigator retained by the University to inquire into the complaint. The Adjudicator also found that the records about the investigation did not meet the definition of "law enforcement" in the FOIP Act as the investigation was conducted pursuant to University policy rather than law. However, the report made by Campus Security was a law enforcement record. The Adjudicator determined that only documents recording workplace incidents or events that were important enough to merit entry in a personnel file were records of "employment history" in section 17(4)(d). The Adjudicator also noted that a public body cannot raise the application of a discretionary exception to disclosure for the first time during an inquiry.

F2003-022, Medicine Hat Police Service (January 18, 2005)

In this Order, the Adjudicator found that, despite evidence of limited financial means, the applicant had not proven she was unable to pay the initial application fee of \$25. The Adjudicator noted that a waiver of the initial fee would be granted only in the most unusual cases where the fee would be a barrier to access.

F2003-023, Lethbridge Police Service (January 18, 2005)

The Lethbridge Police Service could not locate the records of the telephone calls the applicant had made to the Police Service's dispatch. The Adjudicator ordered the Police Service to conduct a new search because considerable time had passed since the first search and it was possible that the records had merely been misplaced or borrowed. The Adjudicator determined that, in the event the records were found, the applicant should be excused from paying all fees, including the \$25 initial fee. By losing the records, the Police Service had barred the applicant's access to them and it would be unfair in the circumstances to require the applicant to pay the fees.

Adjudication Order 5, Grant MacEwan College (August 6, 2004)

Section 75 of the *Freedom of Information and Protection of Privacy (FOIP) Act* provides for the designation of an adjudicator in situations where the Information and Privacy Commissioner is not in a position to conduct a review because he or she has a conflict in relation to the subject matter of the review.

Adjudicators are designated by the Lieutenant Governor in Council and have the same powers and duties as the Commissioner. An Order made by an adjudicator is final (section 81(6)).

In Adjudication Order 5, Justice Peter Martin confirmed all but one of the decisions of Grant MacEwan College with regard to information the College provided on access requests.

To read the Order, click on

www.gov.ab.ca/foip/commissioners_orders/adjudication/pdf/AdjudicationOrder_No5.pdf

OIPC Publications

In December 2004, the OIPC released **FOIP Practice Note 10 – Public Bodies’ Evidence and Arguments for Inquiries**. It is available at www.oipc.ab.ca/ims/client/upload/PN10.pdf.

FOIP Coordinators may want to check out the frequently asked questions posted on the OIPC Web site. Click on www.oipc.ab.ca/foip/faq.cfm to view the questions and answers posted by the OIPC.

Update on Information Management Publications

The **Information Security Classification** guide and the **Information Management Planning** guide have been revised and are now available on the Government of Alberta’s Information Management web site. These publications are available at www.im.gov.ab.ca.

PIPA

The *Personal Information Protection Act* (PIPA) is over one year old. The Act came into force in January 2004 for private sector organizations operating in Alberta. The Act protects the personal information of members of the public as well as employees of those organizations. Resources for organizations are available from the PIPA Web site at www.pipa.gov.ab.ca.

Five investigation reports have been released by the OIPC. The first investigation report, released July 30, 2004 concerns privacy complaints against EPCOR and the second one, released October 15, 2004 concerns the disclosure of customer information among the Melrose REA, ATCO Electric and Direct Energy Marketing Limited. Click on www.oipc.ab.ca/ims/client/upload/P2004-IR-001.pdf to view P2004-IR-001 and www.oipc.ab.ca/ims/client/upload/P2004_IR_002.pdf to view P2004-IR-002.

The other three investigation reports arose from an identity theft case investigated by the Edmonton Police Service, involving Linens ‘N Things, Nor-Don Collection Network Inc., and Digital Communications Group Inc. Click on www.oipc.ab.ca/ims/client/upload/NR_P2005_IR_00123.pdf to view the news release issued by the Office of the Information and Privacy Commissioner on February 8, 2005.

Meeting Calendar

Health Network	March 7, 2005	Edmonton
Post-Secondary FOIP Network	April 1, 2005	Edmonton
Municipal – Edmonton Regional FOIP Alliance	May 19, 2005	Sherwood Park
School Jurisdictions FOIP Network	May 27, 2005	Nisku
Health Network	June 15, 2005	Edmonton

Did You Know...

... Identity theft is called one of the fastest growing crimes in North America. Canadian credit bureaus receive 1400-1800 Canadian identity theft complaints per month. The majority are from Ontario.

... Access & Privacy Conference 2005 will be held June 15-17, 2005 at the Mayfield Inn and Suites in Edmonton. The conference theme, "Moving Forward," will celebrate experiences and accomplishments in the field over the past decade in Alberta, Canada, and beyond. The conference theme focuses on the emerging issues that will provide challenges for access and privacy professionals in the future. More details about the conference can be found at www.accessandprivacy.com.

... The Government of Alberta and the ARMA Edmonton Chapter will be presenting an exciting conference for information management practitioners in the public sector on October 17-18, 2005 at the Mayfield Inn and Suites in Edmonton. Information about the conference will be posted at www.im.gov.ab.ca.

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