



FOIP News

Issue No. 6, May 2002

“FOIP News” is an electronic newsletter produced by Information Management, Access and Privacy (IMAP), 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 Review

The Select Special Freedom of Information and Protection of Privacy (FOIP) Act Review Committee has sent copies of a discussion paper to public body FOIP heads and other stakeholders. The deadline for submissions is May 10, 2002.

Further information about the review and links to meeting transcripts in Hansard are provided in the [Legislation](#) section of the FOIP web site and on the Legislative Assembly's web site at www.assembly.ab.ca/pro/index.htm.

FOIP Guidelines and Practices – 2002 Edition Now Available

The Freedom of Information and Protection of Privacy (FOIP) **Guidelines and Practices** manual is now available from the Queen’s Printer Bookstore for \$29.00 plus GST where applicable. The manual is also available on the FOIP web site.

This manual has been updated and reformatted. More specifically, this edition incorporates amendments to the *FOIP Act* that came into force on April 25, 2001 with the consequential amendments as a result of the proclamation of the *Health Information Act* and on January 1, 2002, with the proclamation of the *Revised Statutes of Alberta (RSA) 2000*. The manual also references Information and Privacy Commissioner Orders and Investigation Reports released up to March 1, 2002. See http://www3.gov.ab.ca/foip/guidelines_practices/2002/revisions_summary.cfm for a summary of the changes.

Information & Privacy Commissioner Orders

2001-025 Human Resources and Employment

In this order, Adjudicator Dave Bell comments on the application of exceptions when responding to a request. He makes the statement that a public body must consider all of the exceptions, especially mandatory ones, when responding to a request as public bodies have a duty to inform an applicant of all the grounds on

which they are refusing access to information. Public bodies should proceed on the basis that there is no second chance on applying exceptions.

HR&E applied a number of exceptions to withhold information in response to a request and then in its written submission to the OIPC made the request to reserve the right to apply another section. This section was not identified initially.

2001-027 Edmonton Police Service

The Edmonton Police Service investigated an alleged assault against the applicant. No charges were laid. The applicant applied for access to the records of that investigation and was provided access to some of the records and only certain information in other records. The information was withheld under section 17 (personal information) and section 20(3)(a) (information in a law enforcement record). The Adjudicator agreed with the decisions the Edmonton Police Service made and ordered the information not be disclosed.

2001-028 Edmonton Catholic Separate School District No. 7

The applicant was not satisfied that the records he received were those that he had requested and felt that the Edmonton Catholic School Separate School District did not respond to his request openly, accurately, and completely. The Adjudicator found that the records disclosed were those the applicant requested and that the School District properly discharged its duty to assist the applicant.

2001-034 Foothills School Division No. 38

The Foothills School Division No. 38 collected an individual's personal information in relation to a student the individual was supervising. The individual did not feel the School Division had the authority to collect this information. The Adjudicator found that the School Division did have the authority to collect the applicant's personal information because of the individual's role in supervising the student.

2001-042 Calgary Police Service

In this order, the Commissioner held that it was fair to excuse payment of the fee because of the protracted and longstanding issues between the applicant and the Calgary Police Service, The Commissioner substituted his own decision to waive the fee, as permitted by section 72(3)(c). It was his view that waiving the fee would assist the applicant in bringing closure to the issues and concerns that have remained outstanding between the Calgary Police Service and the applicant for nearly nine years. He noted the Service did an outstanding job in assisting the applicant.

F2002-001 Edmonton Police Service

The applicant complained that the Edmonton Police Service disclosed the applicant's personal information in violation of Part 2 of the *FOIP Act*. The Edmonton Police Service had issued two news releases to the media that contained personal information of the applicant. One news release outlined the details of a criminal investigation involving the applicant and the second news release indicated that the applicant had turned himself in and had been released on bail. The Adjudicator found that the Edmonton Police Service disclosed the applicant's personal information for the purposes of law enforcement and that the disclosures were in compliance with Part 2 of the *Act*.

Section 55(a) of the *FOIP Act* applied for the first time

On April 10, 2002, the Acting Commissioner authorized both Alberta Municipal Affairs and the Town of Ponoka to disregard an access request from a particular applicant under section 55(a) of the *FOIP Act*. He determined that the access request was of a repetitious or systematic nature and amounted to an abuse of the right to make those access requests. See the Commissioner's news release and decisions at:

http://www3.gov.ab.ca/foip/commissioners_orders/other_decisions/index.cfm.

Judicial Review of Order 2000-032, University of Alberta

"Judicial review" refers to the power of the Court of Queen's Bench of Alberta to determine whether the Information and Privacy Commissioner has acted strictly within the powers that have been given to him or her. Such a review is not an appeal. It does not allow the court to substitute its decision for that of the Commissioner except in exceptional circumstances where the Commissioner's decision is found to be patently unreasonable. A party to an inquiry by the Commissioner may apply for judicial review on jurisdictional grounds or on the basis of an error in law.

In Order 2000-032 the Commissioner had ordered the University of Alberta to release some records. A professor had requested access to all relevant materials concerning a decision by one of the University of Alberta faculties to remove her from a graduate committee. The University of Alberta withheld partially or entirely 22 pages of records under section 16 [now section 17] (personal information) and section 27 (public interest privilege).

The University sought judicial review of the order. The summary of the Justice's conclusions are:

[32] I conclude that the standard of review is one of correctness on questions dealing with the interpretation of general questions of law, and that some deference is owed the Commissioner, as a specialized tribunal, on questions that involve the application and interpretation of the Act, but such deference should be at the lower end of the scale.

[33] I further conclude that the Commissioner erred in weighing the factors under s. 16 of the Act, and that while he is owed some deference in doing so, his

analysis was sufficiently flawed that I quash Order 2000-032 and remit the matter back to the Commissioner to reconsider and re-weigh the factors under s. 16.

Click on http://www3.gov.ab.ca/foip/commissioners_orders/judicial_reviews/index.cfm to obtain the judgment.

Municipalities meet in Lethbridge, May 9, 2002

The first Southern Alberta FOIP Regional Alliance meeting has been set for May 9, 2002 from 10:30 am to 1:30 pm in the Culver City Boardroom at the City of Lethbridge. For more information contact Kathy Wolansky at 403-329-7383 or by e-mail at kwolansky@city.lethbridge.ab.ca.

FOIP 2002 Conference – June 13-14, 2002

A major two-day conference on freedom of information and protection of privacy in Alberta will be held on June 13-14, 2002 in Edmonton. The conference program and registration details are available on the Buksa Associates Inc. web site at <http://www.buksa.com/foip2002/>.

Training Needs Assessment Survey

Thank you to everyone who participated in the FOIP training needs assessment survey. Congratulations to **Anne Sherwood** of the Edmonton Public School Division who is the winner of a complimentary FOIP 2002 Conference registration that Information Management, Access and Privacy provided.

Upcoming FOIP Training

FOIP training will be offered May 1, 2, 3, 2002 in Edmonton. Registration can now be made for any one day of training. Each day of training in the three-day course offering builds upon the previous day.

To obtain the training calendar and registration form, click on http://www3.gov.ab.ca/foip/other_resources/training/index.cfm

Sector Meetings

- **Schools:** May 3, 2002, in Nisku.
 - **Municipalities:**
 - First Southern Alberta FOIP Regional Alliance meeting, May 9, 2002 in Lethbridge.
 - Edmonton area FOIP Alliance meeting, June 20 or 27, 2002 in Sherwood Park.
 - **Post-Secondary Institutions:** June 12, 2002 in Edmonton.
 - **Health:** June 12, 2002 in Edmonton.
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University of Alberta approves IAPP Certificate Program

On February 27, 2002 the University of Alberta's Academic Planning Committee approved the Information Access and Protection of Privacy (IAPP) Certificate Program starting in September 2002. The certificate program will be offered online and include the following courses:

- Information Access and Protection of Privacy Foundations
- Privacy in a Liberal Democracy
- Privacy Application: Issues and Practices
- Information Access: Principles, Practices, Procedures, and Issues
- Health Information Legislation in Canada

More information is available by clicking on <http://www.accessandprivacy.ca/>

Did You Know....

... A conference on access to government and corporate information is being offered May 9-11, 2002 in Winnipeg. More information is available at <http://www.openandcontrolledsociety.ca> or <http://www.mla.mb.ca/ocs>

... The following *Health Information Act* resource materials are now available from the Queen's Printer: a video (\$13.50 + GST), CD ROM (\$13.50 + GST) and guidelines and practices manual (\$42.00 + GST). More information is available by clicking on <http://www.qp.gov.ab.ca/>

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