

1977 Bill 207

Third Session, 18th Legislature, 26 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 207

**AN ACT ESTABLISHING THE RIGHT TO PUBLIC INFORMATION
AND THE PROTECTION OF INDIVIDUAL PRIVACY**

MR. NOTLEY

First Reading

Second Reading

Third Reading

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AN ACT ESTABLISHING THE RIGHT TO PUBLIC INFORMATION AND THE PROTECTION OF INDIVIDUAL PRIVACY

(Assented to , 1977)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. In this Act,

- (a) "agency" includes any department, branch, board, commission or other agency of the Government of Alberta or any other body or authority performing a function of the Government of Alberta;
- (b) "Government" means the Government of Alberta or any agency thereof;
- (c) "individual" means a Canadian citizen or a person lawfully admitted to Canada for permanent residence;
- (d) "private business" includes any item, collection, or grouping of information about an individual which contains the individual's name or any other identifying particular assigned to that individual, including but not limited to, information regarding an individual's education, property, financial transactions, medical history, criminal history or employment history;
- (e) "public business" includes any activity or operation carried on or performed in Alberta or elsewhere by the Government;
- (f) "record" indicates the whole or any part of any book, document, paper, card, tape or other information stored or reproduced or a copy thereof and, where any record does not convey the information contained in the record by reason of its having been kept in a form that requires explanation or processing, includes a transcript of the explanation or processing of the record, which is owned by or in the possession of or maintained by or for the Government.

Explanatory Notes

I. Definitions.

- (g) "resident of Alberta" means an individual who either
 - (i) maintains his principal residence within the Province, or
 - (ii) has been present in the Province on 183 out of the previous 365 days.

- 2. (1) (a) Any individual who is a resident of Alberta may apply to the Government for a record made in the course of public business, and
 - (b) any individual may apply to the Government for a record of his private business, and the Government shall, within a reasonable time thereafter, provide a copy of the record to the individual who so applies, or makes the record available to him for inspection.
- (2) Notwithstanding subsection (1), the Government shall not disclose an individual's record of private business to any person without the prior written consent of the individual to whom the record of private business pertains, whether or not such record forms part of a record of public business.
- (3) Where a record of private business contains information concerning the individual applying therefor jointly with another individual or individuals and and it is not feasible to separate from the record the information relating to the other individual or individuals, the whole of the record shall be supplied to the individual applying therefor without the other individual or individual's consent but a copy thereof shall be sent to the other individual or individuals.
- (4) An individual receiving a record pursuant to subsection (3) shall not reveal the record in whole or in part to any person except for the purposes of this Act or otherwise to protect or promote that individual's interests and only to persons having a need to receive it for the protection or promotion of that individual's interests.
- (5) A person receiving a record of private business from the individual to whom it relates shall not without the consent of the individual or individuals to whom it relates reveal it to any other person.
- (6) Any individual may by signing a consent in a form prescribed by the Lieutenant Governor in Council authorize any person to apply for and receive a record of that individual's private business.

2. Resident entitled to public information.

3. (1) Section 2, subsection (1), clause (a) shall not apply to any record or part thereof
- (a) where any statutory or other law provides that the record or part thereof shall not be made public;
 - (b) made in the course of an investigation or inquiry in the administration of the law or in the course of obtaining or giving legal advice or in contemplation of a legal proceeding;
 - (c) where the information on record is elsewhere provided or available or, in the discretion of any public official, may be made available under any statutory or other law, except where the public official has refused or failed within a reasonable time of demand to make it available.
 - (d) where the information on record is so trivial in public interest that the cost to provide or to make the record available is not in the public interest;
 - (e) where the application therefor is made for a frivolous or vexatious purpose;
 - (f) where the information on record is of a confidential nature exchanged by public officials within the Government or between public officials of the Government and any other Government and was designated as being confidential; or
 - (g) where the information on record relates to the private affairs of any person or organization and, upon a balance of convenience between private and public interest, it is not in the public interest to provide or to make the record available.
- (2) Notwithstanding section 2, subsection (2) the Government may disclose an individual's record of private business to the extent expressly permitted by the authority under which the record was collected.
- (3) Where an agency of Government requests or demands information from an individual the request or demand shall indicate
- (a) whether or not the request or demand for the information is legally enforceable and what penalty may be applied for non-compliance,
 - (b) whether the agency will have the right to reveal the information to any other agency or person, and
 - (c) the principal purpose for which the information will be used,

3. Exemptions; disclosure of private information.

and any information supplied pursuant to such request or demand may only be revealed to other agencies and persons advised pursuant to clause (b).

- (4) Notwithstanding section 2, subsection (2) an individual's record of private business may be used
- (a) for census or other statistical purposes provided the record of private business is revealed in a form that is not identifiable as being the record of any particular individual;
 - (b) for the use of public archives; or
 - (c) by another agency for a civil or criminal law enforcement activity, pursuant to an order of a court of competent jurisdiction.

(5) The date, purpose, extent and recipient of every disclosure of an individual's record of private business made under section 3, subsection (2) shall be recorded on the individual's record of private business.

(6) In the event of disclosure under subsection (4), clause (c) the Government shall give prior notice to the individual concerned of the disclosure of his record of private business.

4. (1) (a) Any person who applies to the Government for a record of public business under the authority of section 2, subsection (1), clause (a), and is denied it in writing or, within a reasonable time after application has been made, is not provided with the record or has not had the record made available to him for inspection, may apply to a judge of the Supreme Court of Alberta for an order that the Government comply with the application and if it appears to the judge that the person has a prima facie right to receive the record applied for, he shall so order.
- (b) An order made under this section shall be served upon the Government by mailing a copy of the order to the Deputy Minister of the Executive Council at his office by registered mail.
 - (c) If, within 14 clear days after the order is so mailed, there is filed with the court on behalf of the Government a reply that the record is exempt from disclosure under section 3, subsection (1) together with particulars in support thereof, proceedings upon the order shall thereby be stayed.
 - (d) The judge shall examine and consider the reply and the statement of particulars and

4. Court order for public information or for correction of private information.

shall thereafter affirm or vacate the order made under clause (a) or amend or vary the terms thereof as he deems best in the public interest.

- (e) (i) The Government may, in any case where it claims that section 3, subsection (1), clause (g) applies file the statement of particulars in support of such claim with the reply but separately in a sealed envelope to be opened only by the judge.
- (ii) The judge shall peruse the statement of particulars and may order it to be resealed or to be communicated to the person who applied for the order or to be otherwise dealt with as he sees fit.

(2) Any individual may apply to the Government for an amendment of his record of private business, and within 30 days the Government shall

- (a) make the corrections demanded, and inform the individual in question, or
- (b) inform the individual concerned of its refusal to correct his record of private business, of the reason for refusal, and of the procedures established to request a review of the refusal pursuant to section 6.

5. Any notice or information required to be given to any individual under this Act shall be deemed sufficiently given when sent by single registered mail to the last address of the individual on record with the Government or the agency thereof by which the notice or information is to be given.

6. The Legislative Assembly, on the recommendation of the chairman of the Human Rights Commission, shall by resolution appoint a member of the Human Rights Commission to act as Privacy Commissioner, who

- (a) shall receive, investigate and report on complaints from individuals who allege that they have not been accorded the rights to which they are entitled under this Act,
- (b) may order the Government to offer financial or other compensation to, or to make changes in the record of private business of, any individual he deems to have a justified complaint under subsection (a),
- (c) shall render a decision on any complaint received within six months of receipt thereof,
- (d) shall establish reasonable and convenient procedures for individuals to submit complaints under subsection (a),

5. Notices.

6. Privacy Commissioner to be appointed.

(e) may receive a salary and expenses if funds are appropriated therefor by the Legislature.

7. Any order or decision of the Privacy Commissioner may be appealed by originating notice of motion to a judge of the Supreme Court of Alberta who may confirm, vary or vacate the order.

8. Upon an application made under section 2 or section 4, subsection (2), the government shall appoint a member of the public service to represent the Government in all proceedings therein, and the person so appointed shall sign any refusal of such application or any claim of exemption under section 4, subsection (1), clause (c).

9. The Government shall maintain all records of private business with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual and prior to disseminating any record of private business, make reasonable efforts to assure that such records are accurate, complete and relevant.

10. (1) Every person who violates or fails to comply with any provision of this Act or any order made by a judge pursuant to this Act is guilty of an offence and is liable on conviction to a fine not exceeding \$1,000 or imprisonment for a term not exceeding six months or to both fine and imprisonment.

(2) Any proceeding under this section shall be instituted within six months after the time when the subject matter of the proceeding arose by the Attorney General or by any person aggrieved by the alleged violation.

11. Nothing in this Act shall be deemed to abrogate, abridge or infringe any of the privileges, immunities and powers held, enjoyed or exercised by a member of the Legislative Assembly.

12. This Act binds the Crown.

13. This Act comes into force on the day upon which it is assented to.

7. Appeal of Privacy Commissioner's decisions.

8. Government representative to be appointed in respect of an application.

9. Accuracy of private information maintained by the Government.

10. Penalties.

11. Privileges of Legislative Assembly unaffected.

12. Binds Crown.

13. Coming into force.