

1981 BILL 201

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 201

THE FREEDOM OF INFORMATION ACT

DR. BUCK

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 201
Dr. Buck

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THE FREEDOM OF INFORMATION ACT

(Assented to , 1981)

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

Purpose of Act

1 The purpose of this Act is to extend the present laws of Alberta to provide a right of access to information in government records, recognizing the principle that government information should be made available to the public and recognizing that necessary exceptions to the principle should be limited and specific and that the application of those exceptions should be reviewed independently of government.

Interpretation

2 In this Act,

(a) “designated Minister”, in relation to any provision of this Act, means the member of the Executive Council designated by the Lieutenant Governor in Council to act as the Minister for the purposes of that provision;

(b) “government institution” means any department or ministry of the Government and any board, commission, body or agency of the Government;

(c) “record” includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, videotape, machine readable record and any other documentary material, regardless of physical form or characteristics, and any copy of it.

Access to Government Records

- Right of access **3** Subject to this Act, every person who is
- (a) a Canadian citizen or landed immigrant, or
 - (b) a corporation incorporated or registered under the provisions of *The Companies Act*
- has a right to and shall, on request, be given access to any record under the control of a government institution.
- Information about Government institutions **4(1)** The designated Minister shall cause to be published, on a periodic basis not less frequently than once each year, a publication containing
- (a) a description of the organization and responsibilities of each government institution, including details of the programmes and functions of each division or branch of each government institution;
 - (b) a description of all classes of records under the control of each government institution in sufficient detail to facilitate the exercise of the right of access under this Act; and
 - (c) the title and address of the appropriate officer for each government institution to whom requests for access to records under this Act should be sent.
- (2) The designated Minister shall cause the publication referred to in subsection (1) to be made available to the public in such a manner that the public shall have adequate information on government records to enable requests for access to be made.
- Requests for access **5** A request for access to a record under this Act shall be made in writing to the government institution that has control of the record and shall provide sufficient detail to enable an experienced employee of the institution to identify the record.
- Response to requests **6** Where access to a record is requested under this Act, the head of the government institution to which the request is made shall, subject to sections 7, 8 and 9, within 30 days after the request is received,
- (a) give written notice to the person who made the request as

to whether or not access to the record or a part of it will be given;
and

(b) if access is to be given, give the person who made the request access to the record or part of it.

Transfer of request **7(1)** Where a government institution receives a request for access to a record under this Act that the head of the institution considers should more appropriately have been directed to another government institution that has a greater interest in the record, the head of the institution may, within 15 days after the request is received, transfer the request to the other government institution, in which case the head of the institution transferring the request shall give written notice of the transfer to the person who made the request.

(2) For the purposes of section 6, where a request is transferred under subsection (1), the request shall be deemed to have been made to the government institution to which it was transferred on the day the government institution to which the request was originally made received it.

(3) For the purposes of subsection (1), a government institution has a greater interest in a record if

(a) the record was originally produced in the institution; or

(b) in the case of a record not originally produced by a government institution, the institution was the first institution to receive the record or a copy of it.

Extension of time limits **8** The head of a government institution may extend the time limit set out in section 6 or section 7(1) in respect of a request under this Act for a reasonable period of time, having regard to the circumstances, if

(a) the request is for a large number of records or necessitates a search through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government institution, or

(b) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit

by forthwith giving notice of the extension and the length of the extension to the person who made the request, which notice shall contain a statement that the person has a right to apply to a judge for an order denying the validity of the extension or varying the amount of it.

Statement of grounds for refusal **9(1)** Where the head of a government institution refuses to give access to a record or a part of a record requested under this Act, the

head of the institution shall state in the notice given in respect of the record pursuant to section 6(a)

(a) the specific provision of this Act on which the refusal was based or the provision on which a refusal could reasonably be expected to be based if the record existed; and

(b) that the person who made the request has a right to apply to a judge for an order reversing the refusal.

(2) The head of a government institution is not required under subsection (1) to indicate whether a record requested under this Act exists.

(3) Where the head of a government institution fails to give access to a record or part of a record requested under this Act within the time limits set out in this Act, the head of the institution shall, for the purposes of this Act, be deemed to have refused to give access to the record.

Payment for record

10 Subject to this section a person who makes a request for access to a record under this Act shall pay

(a) at the time the request is made, such application fee, not exceeding \$10, as may be prescribed by regulation toward the costs of search for or production of the record and the costs of reviewing the record;

(b) a fee prescribed by regulation for every hour in excess of 5 hours needed to search for or produce the record; and

(c) before any copies are made, a reasonable fee, determined by the head of the government institution that has control of the record, reflecting the cost of reproducing the record or part of it.

Form of access

11(1) Subject to subsection (2), a person who has the right of access to a record or a part of it may, at the option of the person,

(a) be given a copy of the record or part of it, or

(b) examine the record or part of it.

(2) No copy of the record or part of it shall be given under this Act where

(a) it would not be reasonably practicable to reproduce the record or part of it by reason of the length or nature of the record, or

(b) the making of such copy would involve an infringement of copyright other than copyright of Her Majesty in right of Alberta.

Exemptions

- Information held in confidence **12** The head of a government institution shall refuse to disclose a record requested under this Act where the record contains information that was obtained in confidence under an agreement or arrangement between the Government of Alberta and any other government or any international organization other than a corporation.
- Government negotiations **13** The head of a government institution may refuse to disclose a record requested under this Act where the record contains information the disclosure of which could reasonably be expected to affect adversely federal-provincial or interprovincial negotiations.
- National security; crime detection **14** The head of a government institution may refuse to disclose a record requested under this Act where the record contains information the disclosure of which could reasonably be expected to be detrimental to the national security, the detection or prevention of a crime or the safety of the public or of one or more persons.
- Information of a personal nature **15(1)** The head of a government institution shall refuse to disclose a record requested under this Act where the record contains personal information respecting an identifiable individual including, without restricting the generality of the foregoing,
- (a) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual;
 - (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
 - (c) any identifying number, symbol or other particular assigned to the individual;
 - (d) the address, fingerprints or blood type of the individual;
 - (e) the personal opinions or views of the individual;
 - (f) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence, except correspondence and replies the disclosure of which are consented to by the individual;

(g) the views or opinions of another person in respect of the individual; and

(h) the name of the individual where it appears in a record together with other personal information relating to the individual or where the disclosure of the name itself would reveal information in respect of the individual.

(2) Subsection (1) does not apply in respect of the following classes of information:

(a) information in respect of an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,

(i) the fact that the individual is or was an officer or employee of the government institution,

(ii) the title, business address and telephone number of the individual,

(iii) the classification, salary range and responsibilities of the position held by the individual,

(iv) the name of the individual on a document prepared by the individual in the course of employment, and

(v) the personal opinions or views of the individual given in the course of employment except where they are given in respect of another individual;

(b) the terms of any contract of or for personal services under which an individual performs services for a government institution, and the opinions or views of the individual given in the course of the performance of such services except where they are given in respect of another individual; and

(c) information relating to any discretionary benefit conferred on an individual, including the name of the individual and the exact nature of the benefit.

Financial,
commercial,
scientific or
technical
information

16(1) The head of a government institution may refuse to disclose a record requested under this Act where the record contains financial, commercial, scientific or technical information

(a) the disclosure of which could reasonably be expected to result in information of the same kind no longer being supplied to the government institution, where the information was supplied to a government institution on the basis that the information be kept confidential and where it is in the public interest that information of that type continues to be supplied to the government institution;

(b) the disclosure of which could reasonably be expected to prejudice significantly the competitive position of, or interfere significantly with contractual or other negotiations with a person, group of persons, organization or government institution; or

(c) the disclosure of which could reasonably be expected to result in undue financial loss or gain by a person, group of persons, organization or government institution.

(2) The head of a government institution may not, pursuant to subsection (1), refuse to disclose a record under the control of the institution that contains the results of product or environmental testing unless

(a) the testing was done by the government institution as a service and for a fee, and not as a legal obligation, or

(b) the head of the institution believes, on reasonable grounds, that the results are misleading or substantially invalid.

Operations of
Government

17(1) The head of a government institution shall refuse to disclose a record requested under this Act if it falls within any of the following classes:

(a) records containing proposals or recommendations submitted, or prepared for submission, by a Minister to Executive Council;

(b) records containing agendas of Executive Council or recording deliberations or decisions of Executive Council;

(c) records used for or reflecting consultations among Ministers on matters relating to the making of government decisions or the formulation of government policy;

(d) records containing briefings to Ministers in relation to matters that are before, or are proposed to be brought before, Executive Council or that are the subject of consultations referred to in clause (c);

(e) draft legislation before its introduction in the Legislative Assembly of Alberta; and

(f) records containing background explanations, analyses of problems or policy options submitted or prepared for submission by a Minister to Executive Council for consideration by Executive Council in making decisions, before such decisions are made.

(2) Subsection (1) does not apply in respect of any record

(a) where disclosure of the record is authorized by Executive Council; or

(b) where a request is made under this Act for access to the record more than 20 years after the record came into existence.

(3) For the purposes of this section, “Executive Council” includes a committee of the Executive Council of the Government.

Miscellaneous exemptions

18 The head of a government institution may refuse to disclose a record requested under this Act where the record contains information

(a) relating to testing or auditing procedures or techniques or details of specific tests to be given or audits to be conducted if such disclosure would prejudice the use or results of particular tests or audits;

(b) that is subject to a solicitor-client privilege;

(c) that is required under any other Act to be withheld from the general public or from any person not legally entitled thereto.

(d) that the head of the institution believes on reasonable grounds that the material in the record or part of it will be published by the Government within 90 days from the time the request is made.

Severability

19 Notwithstanding any other provision of this Act, where a request is made to a government institution for access to a record that the head of the institution may refuse to disclose under this Act by reason of information contained in the record, the head of the institution shall disclose any part of the record that does not contain any such information and can reasonably be severed from any part containing such information.

5 year old information

20 The head of a government institution may, during the first year after the coming into force of this Act, refuse to disclose a record under the control of the institution that was in existence more than 5 years before the coming into force of this Act where, in the opinion of the head of the institution, to comply with a request for the record would unreasonably interfere with the operations of the government institution.

Application to the Court

Application to the court

21 Any person who

(a) has been refused access to a record or part of a record requested under this Act;

(b) has been required to pay an amount under section 10 that he considers unreasonable;

(c) who requested access to records in respect of which time limits have been extended pursuant to section 8 where he considers the extension unreasonable; or

(e) believes that any other right established by this Act has been denied to him

may make an application to the Court of Queen's Bench for an order that he be given access to the record, or that an amount required to be paid be amended or that a right denied be granted.

Limitation on application

22 An application pursuant to section 21 shall be made within one year from the time when the request for the record in respect of which the complaint is made was received or the request was denied, whichever is the later.

Grounds for denial

23 The Court may deny the application, if in its opinion

(a) the complaint is trivial, frivolous or vexatious; or

(b) having regard to all the circumstances, investigation or further investigation of the need for access is not necessary or reasonably practicable,

and a denial will not be contrary to the principle established in section 1.

Court avoid prejudicing confidentiality.

24(1) In any proceedings before the Court arising from an application under section 21, the Court shall take every reasonable precaution, including, when appropriate, receiving representations ex parte and conducting hearings in camera, to avoid the public disclosure by the Court or any other person of

(a) any information contained in a record the disclosure of which may be refused under this Act by reason of the class of records into which it falls; or

(b) any information on the basis of which the disclosure of a record or part of a record may be refused under this Act.

(2) The Court may disclose to the appropriate authority, information relating to an offence against any law on the part of any officer or employee of a government institution, if in the opinion of the Court there is prima facie evidence of an offence.

Burden of proof

25 In any proceedings before the Court arising from an application under section 21, the burden of establishing that access to a record or part of a record requested under this Act may be refused shall be on the government institution concerned.

- Order to disclose **26** Where the Court determines that the head of a government institution is not entitled to refuse to disclose a record or part of a record requested under this Act, the Court shall order him to disclose the record or part of it, subject to such conditions as the Court deems appropriate, to the person who requested access to the record, or shall make such other order as the Court deems appropriate.
- Cost of application **27**(1) Subject to subsection (2), the costs of and incidental to all proceedings in the Court under this Act shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise.
- (2) Where the Court is of the opinion that an application for review under section 21 has raised an important new principle in relation to this Act, the Court shall order that costs be awarded to the applicant even if the applicant has not been successful in the result.
- Application to published material **28** This Act does not apply to
- (a) published material or material available for purchase by the public;
 - (b) library or museum material made or acquired and preserved solely for reference or exhibition purposes; or
 - (c) material placed in the Provincial Archives by or on behalf of persons or organizations other than government institutions.
- Records management **29** The designated Minister shall
- (a) cause to be kept under review the manner in which records under the control of government institutions are maintained and managed to ensure compliance with the provisions of this Act and the regulations relating to access to records;
 - (b) prescribe such forms as may be required for the operation of this Act and the regulations; and
 - (c) cause to be prepared and distributed to government institutions guidelines concerning the operation of this Act and the regulations.
- Power of delegation **30** The head of a government institution may by order designate one or more officers or employees of that institution to exercise or perform any of the powers, duties or functions of the head of the institution under this Act specified in the order.
- Liability for disclosure **31** Notwithstanding any other Act, no civil or criminal proceedings

lie against the head of any government institution, or against any person acting on behalf or under the direction of the head of a government institution, and no proceedings lie against the Crown, for the disclosure in good faith of any record or any part thereof pursuant to this Act or for any consequences that flow from such disclosure.

- Committee review **32** The administration of this Act may be reviewed by such committee as the Legislative Assembly of Alberta may appoint for the purpose.
- Crown bound by Act **33** This Act binds the Crown.
- Regulations **34** The Lieutenant Governor in Council may make regulations prescribing fees or forms or procedures for the fulfillment of the purposes of this Act.
- The Alberta Evidence Act **35** A proceeding under this Act other than a proceeding under section 36 shall be deemed not to be a proceeding under *The Alberta Evidence Act*.
- Offences and penalties **36(1)** Every person who violates or fails to comply with any provision of this Act or any order made by a court pursuant to this Act is guilty of an offence and is liable on summary conviction to a fine of up to \$1000 or to imprisonment for a term not exceeding 6 months or to both fine and imprisonment.
- (2) Proceedings under this section may be instituted at any time within 6 months after the time when the subject matter of the proceedings arose.
- (3) Where a person is accused of having denied access to a record which should according to this Act have been given, it shall be a defence that he had reasonable grounds to believe that the record was exempted from access by this Act or by any other Act, that he took reasonable steps to investigate the matter and that he acted in good faith.
- Existing remedies **37** The provisions of this Act shall not be construed as to exclude any method of obtaining public information which is established by law.
- Powers of Assembly not affected **38** Nothing in this Act shall be deemed to abrogate, abridge, replace, reduce or infringe any of the privileges, immunities and powers held, enjoyed or exercised by the Legislative Assembly or its members.

Coming into force **39** This Act comes into force on January 1, 1982.