

1991 BILL 234

Third Session, 22nd Legislature, 40 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 234

FREEDOM OF INFORMATION AND
PERSONAL PRIVACY ACT

MR. PASHAK

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 234
Mr. Pashak

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FREEDOM OF INFORMATION AND PERSONAL PRIVACY ACT

(Assented to , 1991)

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

Purposes

- 1 The purposes of this Act are,
 - (a) to provide for access to information under the control of the Government in accordance with the principles that,
 - (i) the public has a right to information with respect to public business and access should be denied only in specific and clearly defined circumstances, and
 - (ii) the public has a right to an independent review of a decision to not disclose information; and
 - (b) to protect the privacy of individuals with respect to private information or records held by the Government and to provide individuals with a right of access to that information.

Definitions

- 2 In this Act,
 - (a) "agency" includes any department, branch, board, commission or other branch of the Government or any other body or authority performing a function of the Government;
 - (b) "individual" means a Canadian citizen or a person lawfully admitted to Canada for permanent residence;
 - (c) "private business" includes any item, collection or grouping of information about an individual which contains the individual's name or any other identifying reference 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;

(d) "public business" includes any activity or operation carried on or performed in Alberta or elsewhere by the Government;

(e) "record" indicates the whole or any part of any book, document, paper, card, tape or other information stored or reproduced or a copy of it 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;

(f) "resident of Alberta" means an individual who either

(i) maintains his principal residence with the Province, or

(ii) has been present in the Province on 183 out of the previous 365 days.

Application for
record

3(1)(a) Any 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 own private business,

and the Government shall, within a reasonable time thereafter, provide a copy of the record to the individual who so applies, or make 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 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 for it jointly with another individual and it is not possible to separate from the record the information relating to the other individual, the whole of the record shall be supplied to the individual applying for it without the other individual's consent but a copy of it shall be sent to the other individual.

(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 legitimate interests and only to persons having a need to receive it for the protection or promotion of that individual's legitimate 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 his private business.

Exceptions

4(1) Section 3(1)(a) shall not apply to any record or part of it

(a) made in the course of obtaining or giving legal advice in preparation for or regarding a legal proceeding before the courts until the proceeding is concluded;

(b) which contains information, the release of which could reasonably be expected to be detrimental to Alberta's or Canada's dealings or relationships with another province or state;

(c) where the information on record is elsewhere provided or available to the applicant;

(d) which, if released, would result in direct personal financial gain or loss by any person other than the person to whom the record relates;

(e) which discloses information concerning the private financial affairs of a person who is not a member of the Legislative Assembly or the public service;

(f) where the information or record reflects on the private affairs of any person or organization and, upon a balance between private and public interest, it is not in the public interest to provide or make the record available;

(g) involving an agenda, minute, memorandum or other record of the deliberations or decisions of the Executive Council or its committees unless that record is more than 20 years old.

Use of
information,
records

(2) Notwithstanding section 2(2), the Government may disclose an individual's record of private business to the extent expressly permitted by the statutory authority under which the record was collected.

5(1) 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 and on what conditions 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,

and any information supplied pursuant to such request or demand may only be revealed to another agency or person on the fulfillment of the conditions indicated pursuant to clause (b).

(2) Notwithstanding section 2(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 any agency for a civil or criminal proceeding against or on behalf of the person to whom the record relates or with the prior consent of a judge of the Court of Queen's Bench on application or notice made to him, against a person who is his parent or child or is or has been his spouse.

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

(4) In the event of disclosure under subsection (2)(c) the Government shall give notice to the individual concerned of the disclosure of his record of private business.

Procedure on
refusal or record

6(1) Any person who applies to the Government for a record of public business under the authority of section 2(1)(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

(a) to the Ombudsman who shall give his opinion thereon to the applicant and to the Government; or

(b) irrespective of the findings of the Ombudsman, to a judge of the Court of Queen's Bench 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.

(2) 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.

(3) 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(1), together with particulars in support of it, proceedings upon the order shall thereby be stayed.

(4) The judge shall examine and consider the reply and the statement of particulars and shall thereafter affirm or vacate the order made under subsection (1) or amend or vary the terms of it as he deems best in the public interest.

(5) The Government may, in any case where it claims that section 3(1)(f) 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, and 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.

Corrections

7 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 8.

- Notice** **8** 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 by which the notice or information is to be given.
- Privacy Commissioner** **9** The Legislative Assembly, on the recommendation of the chairman of the Human Rights Commission, may 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 that the Government grant 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 clause (a);
 - (c) shall render a decision on any complaint received within 6 months of receipt of it;
 - (d) shall establish reasonable and convenient procedures for individuals to submit complaints under clause (a);
 - (e) may receive a salary and expenses from money that has been appropriated to that purpose by the Legislature.
- Order of Commissioner** **10** Any order or decision of the Privacy Commissioner may be appealed by originating notice of motion to a judge of the Court of Queen's Bench who may confirm, vary or vacate the order.
- Government representative** **11** Upon an application made under section 2 or section 6, 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 5(3).
- Government responsibility in records** **12** 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.
- Offences, penalties** **13(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 \$5000 or imprisonment for a term not exceeding 6 months or to both fine and imprisonment.

(2) Any proceeding under this section may be instituted only within 6 months after the time when the subject matter of the proceeding arose and may be commenced by the Attorney General or by any person claiming to have suffered from the alleged violation.

Present remedies 14 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.

Crown bound 15 This Act binds the Crown.