

1993 BILL 201

First Session, 23rd Legislature, 42 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 201

FREEDOM OF INFORMATION AND PROTECTION OF PERSONAL PRIVACY ACT

MR. DECORE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 201
Mr. Decore

BILL 201

1993

FREEDOM OF INFORMATION AND PROTECTION OF PERSONAL PRIVACY ACT

(Assented to , 1993)

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

Purpose

1 The purposes of this Act are,

(a) to provide a right of access to information under the
control of institutions in accordance with the principles that,

(i) information should be available to the public,

(ii) necessary exemptions from the right of access should
be limited and specific, and

(iii) decisions on the disclosure of government
information should be reviewed independently of
government, and

(b) to protect the privacy of individuals with respect to
personal information about themselves held by institutions and
to provide individuals with a right of access to that
information.

Definitions

2(1) In this Act,

(a) "head", in respect of an institution, means,

(i) in the case of a department, the minister who

presides over the department, and

(ii) in the case of any other institution, the person designated as head of that institution in the regulations;

(b) "Information and Privacy Commissioner" and "Commissioner" mean the Commissioner appointed under subsection 4(1);

(c) "institution" means,

(i) a department of the Government of Alberta,

(ii) the corporation of every municipality in Alberta, as defined by the *Municipal Government Act*, and every authority, board, commission, corporation, office or organization of persons whose members or officers are appointed or chosen by or under the authority of the council of the corporation of a municipality in Alberta, and

(iii) any agency, board, commission, corporation or other body designated as an institution in the regulations;

(d) "law enforcement" means,

(i) policing,

(ii) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and

(iii) the conduct of proceedings referred to in subclause (ii);

(e) "personal information" means recorded information about an identifiable individual, including,

(i) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(ii) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial

transactions in which the individual has been involved,

(iii) any identifying number, symbol or other particular assigned to the individual,

(iv) the address, telephone number, fingerprints or blood type of the individual,

(v) the personal opinions or views of the individual except where they relate to another individual,

(vi) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of original correspondence,

(vii) the views to opinions of another individual about the individual, and

(viii) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

(f) "personal information bank" means a collection of personal information that is organized and capable of being retrieved;

(g) "record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes;

(i) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

(ii) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;

(h) "regulations" means the regulations made under this Act;

(i) "responsible minister" means the minister of the Crown who is designated by order of the Lieutenant Governor in Council under section 3.

Personal information (2) Personal information does not include information about an individual who has been dead for more than 30 years.

Deemed head where no designation (3) Where no head is designated under clause (ii) in the definition of "head" in subsection (1)(a) in respect of an institution, the minister responsible for that institution shall be deemed head of that institution.

PART 1

ADMINISTRATION

Responsible Minister 3 This Act shall be administered by the member of Executive Council named for the purpose by the Lieutenant Governor in Council.

Information and Privacy Commissioner 4(1) There shall be appointed, as an officer of the Legislature, an Information and Privacy Commissioner to exercise the powers and perform the duties prescribed by this Act.

Appointment (2) The Commissioner shall be appointed by the Lieutenant Governor in Council on the recommendation of the Legislative Assembly.

Term and removal from office (3) The Commissioner shall hold office for a term of 5 years and may be reappointed for a further term or terms, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly.

Assistant Commissioners (4) The Commissioner shall appoint an officer of his staff to be Assistant Information Commissioner and another officer of staff to be Assistant Privacy Commissioner.

Nature of Employment 5 The Commissioner shall work exclusively as Commissioner and shall not hold any other office under the Crown or engage in any other employment.

Salary	6(1) The Commissioner shall be paid a salary to be fixed by the Lieutenant Governor in Council out of such money as is appropriated to the purpose by the Legislature.
Idem	(2) The salary of the Commissioner shall not be reduced except on the recommendation of the Assembly.
Expenses	(3) The Commissioner is entitled to be paid reasonable travelling and living expenses while absent from an ordinary place of residence in the exercise of any function under this Act.
Pension	(4) The <i>MLA Pension Plan Act</i> applies with necessary modifications to the Commissioner in the same manner as if the Commissioner were a member of the Legislature Assembly.
Temporary Commissioner	7 If, while the Legislature is not in session, or is adjourned for more than 30 days, the Commissioner dies, resigns, or is unable or neglects to perform the functions of the office of Commissioner, the Lieutenant Governor in Council may appoint a Temporary Commissioner to hold office for a term of not more than 6 months who shall, while in such office, have the powers and duties of the Commissioner and shall be paid such salary or other remuneration and expenses as the Lieutenant Governor in Council may fix, provided money has been appropriated for the purpose.
Staff	8(1) Subject to the approval of the Lieutenant Governor in Council, the Commissioner may employ mediators and any other officers and employees the Commissioner considers necessary for the efficient operation of the office and may determine their salary and remuneration and terms and conditions of employment.
Benefits	<p>(2) The employee benefits applicable from time to time to the public service of Alberta with respect to</p> <ul style="list-style-type: none"> (a) cumulative vacation and sick leave credits for regular attendance and payments in respect of such credits, (b) plans for group life insurance, medical-surgical insurance or long term income protection, and (c) the granting of leave of absence, <p>apply to the employees of the Commissioner, and where such benefits are provided for in regulations made under the <i>Public</i></p>

Service Act, the Commissioner or any person authorized in writing by him, may exercise the powers and duties of a minister or deputy minister under such regulations.

Pensions and
supplies

9(1) The Commissioner may lease any premises and acquire any equipment and supplies necessary for the efficient operation of the office of the Commissioner.

Salary and
expenses

(2) The salary of the Commissioner and the expenses required for the operation of the office are payable out of moneys appropriated to that purpose by the Legislature.

Audit

(3) The accounts and financial transactions of the office of the Commissioner shall be audited annually by the Auditor General.

PART 2

FREEDOM OF INFORMATION

Division 1

Access to Records

Right of Access

10(1) Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless the record or the part of the record falls within one of the exemptions under sections 12 to 22.

Severability of
record

(2) Where an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

Obligation to
disclose

11(1) Despite any other provision of this Act, a head, shall, as soon as practicable, disclose any record to the public or person affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

Notice

(2) Before disclosing a record under subsection (1), the head shall cause notice to be given to any person to whom the

information in the record related, if it is practicable to do so.

Contents of notice

(3) The notice shall contain,

(a) a statement that the head intends to release a record or a part of a record that may affect the interests of the person;

(b) a description of the contents of the record or part that relate to the person; and

(c) a statement that if the person makes representations forthwith to the head as to why the record or part thereof should not be disclosed, those representations will be considered by the head.

Representations

(4) A person who is given notice under subsection (2) may make representations forthwith to the head concerning why the record or part should not be disclosed.

Division 2

Exemptions

Cabinet records

12(1) A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

(a) an agenda, minute or record of the deliberations or decisions of the Executive Council or its committees;

(b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;

(c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decision, before those decisions are made and implemented;

(d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of

government decisions or the formulation of government policy;

(e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations or the formulation of government policy; and

(f) draft legislation or regulations.

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where,

(a) the record is more than 20 years old; or

(b) the Executive Council for which, in respect of which, the record has been prepared consents to access being given.

Advice to
government

13(1) A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

(a) factual material;

(b) a statistical survey;

(c) a report by a valuator, whether or not the valuator is an officer of the institution;

(d) an environmental impact statement or similar record;

(e) a report of a test carried out on a product for the purpose of government equipment testing or a consumer test report;

(f) a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy;

(g) a feasibility study or other technical study, including a cost estimate, relating to a government policy or project;

(h) a report containing the results of field research undertaken before the formulation of a policy proposal;

(i) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program, unless the plan or proposal is to be submitted to the Executive Council or its committees;

(j) a report of an interdepartmental committee task force or similar body, or of a committee or task force within an institution, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to the Executive Council or its committees;

(k) a report of a committee, council or other body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;

(l) the reasons for a final decision, order or ruling of an officer of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment of scheme administered by the institution, whether or not the enactment or scheme allows an appeal to be taken against the decision, order or ruling, whether or not the reasons

(i) are contained in an internal memorandum to the institution or in a letter addressed by an officer or employee of the institution to a named person, or

(ii) were given by the officer who made the decision, order or ruling or were incorporated by reference into the decision, order or ruling.

(3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where the record is more than 20 years old or where the head has publicly cited the record as the basis for making a decision or formulating a policy.

Law enforcement

14(1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,

(a) interfere with a law enforcement matter;

(b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

(c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

(d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

(e) endanger the life or physical safety of a law enforcement officer or any other person;

(f) deprive a person to the right of a fair trial or impartial adjudication;

(g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;

(h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;

(i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

(j) facilitate the escape from custody of a person who is under lawful detention;

(k) jeopardize the security of a centre for lawful detention; or

(l) facilitate the commission of an unlawful act or hamper the control of crime.

(2) A head may refuse to disclose a record,

(a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

(b) that is a law enforcement record where the disclosure would constitute an offence under an Act of Parliament;

(c) that is a law enforcement record where the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or

(d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

Refusal to confirm
or deny existence
of record

(3) A head may refuse to confirm or deny the existence of a record to which subsections (1) or (2) apply.

Exception

(4) Despite subsection 2(a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency where that agency is authorized to enforce and regulate compliance with a particular statute of Alberta.

(5) Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections.

Relations with
other governments

15 A head may refuse to disclose a record where the disclosure could reasonably be expected to,

(a) prejudice the conduct of intergovernmental relations by the Government of Alberta or an institution;

(b) reveal information received in confidence from another government or its agencies by an institution; or

(c) reveal information received in confidence from an international organization of states or a body thereof by an institution,

and shall not disclose any such record without the prior approval of the Executive Council.

Defence

16 A head may refuse to disclose a record where the disclosure could reasonably be expected to prejudice the defence of Canada or of any foreign state allied or associated with Canada or be injurious to the detection, prevention or suppression of espionage, sabotage or terrorism and shall not disclose any such record without the prior approval of the Executive Council.

Third party
information

17(1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied; or

(c) result in undue loss or gain to any person, group, committee or financial institution or agency.

Consent to
disclosure

(2) A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure.

Economic and
other interests of
Alberta

18(1) A head may refuse to disclose a record that contains,

(a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Alberta or an institution and has monetary value or potential monetary value;

(b) information obtained through research by an employee of an institution where the disclosure could reasonably be expected to deprive the employee of priority of publication;

(c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

(d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Alberta or the ability of the Government of Alberta to manage the economy of Alberta;

(e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution of the Government of Alberta;

(f) plans relating to the management of personnel or the

administration of an institution that have not yet been put into operation or made public;

(g) information including the proposed plans, policies or projects if an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person.

Exception

(2) A head shall not refuse under subsection (1) to disclose a record that contains the results of product or environmental testing carried out by or for an institution, unless,

(a) the testing was done as a service to a person, a group of persons or an organization other than an institution and for a fee; or

(b) the testing was conducted as a preliminary or experimental tests for the purpose of developing methods of testing.

Solicitor-client
privilege

19 A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

Danger to safety
or health

20 A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

Personal privacy

21(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

(b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;

(c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;

(d) under an Act of Alberta or Canada that expressly authorizes the disclosure;

(e) for a research purpose if,

(i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,

(ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and

(iii) terms and conditions relating to,

(A) security and confidentiality,

(B) the removal or destruction of the individual identifier or identifiers associated with the record at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research or statistical project, and

(C) the prohibition of any subsequent use or disclosure of the record in individually identifiable form without the express authorization of the institution,

have been approved by the responsible minister and the person obtaining the record has filed with the responsible minister a written statement indicating that the person understands and will abide by the terms and conditions; or

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Criteria re
invasion of privacy

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta and its agencies to public scrutiny;

- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

Presumed invasion
of privacy

- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
 - (a) related to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
 - (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
 - (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
 - (d) relates to employment or education history;
 - (e) was obtained on a tax return or gathered to the purpose of collecting a tax;
 - (f) describes an individual's finances, income, assets

liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

(g) consists of personal recommendations or evaluations, character references or personnel evaluations; or

(h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

Limitation

(4) Notwithstanding subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

(a) discloses the classification, salary ranges and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution or a member of the staff of a minister;

(b) discloses financial or other details of a contract for personal services between an individual and an institution; or

(c) discloses details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a head under circumstances where,

(i) the individual represents 1% or more of all persons or organizations in Alberta receiving a similar benefit, and

(ii) the value of the benefit to the individual represents 1% or more of the total value of similar benefits provided to other persons and organizations in Alberta.

Refusal to confirm
or deny existence
of record

(5) A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

Information soon
to be published

22 A head may refuse to disclose a record where,

(a) the record or the information contained in the record has been published or is currently available to the public; or

(b) the head believes on reasonable grounds that the record or the information contained in the record will be published by an institution within 90 days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing

it.

Exemptions not to
apply

23 An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

Division 3

Access Procedure

Request

24(1) A person seeking access to a record shall make a request therefor in writing to the institution that the person believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon reasonable effort, to identify the record.

Sufficiency of
detail

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Request for
continuing access
to record

(3) The applicant may indicate in the request that it shall, if granted, continue to have effect for a specified period of up to 2 years.

(4) When a request that is to continue to have effect is granted, the institution shall provide the applicant with,

(a) a schedule showing dates in the specified period on which the request shall be deemed to have been received again, and explaining why those dates were chosen; and

(b) a statement that the applicant may ask the Commissioner to review the schedule.

Act applies as if
new requests were
being made

(5) The Act applies as if a new request were being made on each of the dates shown in the schedule.

Request to be
forwarded

25(1) Where an institution receives a request for access to a record that the institution does not have in its custody or under its control, the head shall make all necessary inquiries to determine whether another institution has custody or control of the record, and where the head determines that another

institution has custody or control of the record, the head shall within 15 days after the request is received,

(a) forward the request to the other institution; and

(b) give written notice to the person who made the request that it has been forwarded to the other institution.

Transfer of request

(2) Where an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request shall give written notice of the transfer to the person who made the request.

Greater interest

(3) For the purpose of subsection (2), another institution has a greater interest in a record than the institution that receives the request for access if,

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

(b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy thereof.

When transferred
request deemed
made

(4) Where a request is forwarded or transferred under subsection (1) or (2), the request shall be deemed to have made to the institution to which it is forwarded or transferred on the day the institution to which the request was originally made received it.

Notice by head

26 Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 25, the head of the institution to which it is forwarded or transferred, shall, subject to sections 27 and 28, within thirty 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 thereof will be given; and

(b) if access is to be given, give the person who made the request access to the record or part thereof, and where necessary for the purpose cause the record to be produced.

Extension of time	<p>27(1) A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,</p> <ul style="list-style-type: none"> (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or (b) consultations that cannot reasonably be completed within the time limit are necessary to comply with the request.
Notice of extension	<p>(2) Where a head extends the time limit under subsection (1), the head shall give the person who made the request written notice of the extension setting out,</p> <ul style="list-style-type: none"> (a) the length of the extension; (b) the reason for the extension; and (c) that the person who made the request may ask the Commissioner to review the extension.
Notice to affected person	<p>28(1) Before a head grants a request for access to a record,</p> <ul style="list-style-type: none"> (a) that the head has reason to believe might contain information referred to in section 17(1) that affects the interest of a person other than the person requesting information; or (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purpose of section 21(1)(f), <p>the head shall give written notice in accordance with section (2) to the person to whom the information relates.</p>
Contents of notice	<p>(2) The notice shall contain,</p> <ul style="list-style-type: none"> (a) a statement that the head intends to release a record or part thereof that may affect the interests of the person; (b) a description of the contents of the record or part thereof that relate to the person; and (c) a statement that the person may, within twenty days after

the notice is given make representations to the head as to why the record or part thereof should not be disclosed.

Time for notice (3) The notice referred to in subsection (1) shall be given within 30 days after the request for access is received or, where there has been an extension of a time limit under section 27(1), within that extended time limit.

Notice of delay (4) Where a head gives notice to a person under subsection (1), the head shall also give the person who made the request written notice of delay, setting out,

(a) that the record or part thereof may affect the interests of another party;

(b) that the other party is being given an opportunity to make representations concerning disclosure; and

(c) that the head will within 30 days decide whether or not to disclose the record.

Representation re disclosure (5) Where a notice is given under subsection (1), the person to whom the information relates may, within 20 days after the notice is given, make representations to the head as to why the record or the part thereof should not be disclosed.

Representation in writing (6) Representations under subsection (5) shall be made in writing unless the head permits them to be made orally.

Decision re disclosure (7) The head shall, within 30 days after the notice under subsection (1) is given, but not before the earlier of,

(a) the day the response to the notice from the person to whom the information relates is received; or

(b) twenty-one days after the notice is given,

decide whether or not to disclose the record or the part thereof and give written notice of the decision to the person to whom the information relates and the person who made the request.

Notice of head's decision to disclose (8) Where the head decides to disclose a record or part thereof under subsection (7), the head shall state in the notice that,

(a) the person to whom the information relates may appeal the decision to the Commissioner within 30 days after the notice is given; and

(b) the person who made the request will be given access to the record or to a part thereof, unless an appeal of the decision is commenced within 30 days after the notice is given.

(9) Where, under subsection (7), the head decides to disclose the record or a part thereof, the head shall give the person who made the request access to the record or part thereof within 30 days after notice is given under subsection (7), unless the person to whom the information relates asks the Commissioner to review the decision.

Access to be given
unless affected
person appeals

29(1) Notice of refusal to give access to a record or a part thereof under section 26 shall set out,

(a) where there is not such record, that there is no such record; or

(b) where there is such a record,

(i) the specific provision of this Act under which access is refused,

(ii) the reason the provision applies to the record,

(iii) the name and position of the person responsible for making the decision, and

(iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

Idem

(2) Where a head refuses to confirm or deny the existence of a record as provided in section 14(3) or section 21(5), the head shall state in the notice given under section 26,

(a) that the head refuses to confirm or deny the existence of the record;

(b) the provision of this Act on which the refusal is based;

(c) the name and office of the person responsible for making the decision; and

(d) that the person whom made the request may appeal to the Commissioner for a review of the decision.

Idem

(3) Where a head refuses to disclose a record or part thereof under section 28(7), the head shall state in the notice given under section 28(7),

(a) the specific provision for this Act under which access is refused;

(b) the reason the provision named in clause (a) applies to the record;

(c) the name and office of the person responsible for making the decision to refuse access; and

(d) that the person who made the request may appeal to the Commissioner for a review of the decision.

Deemed refusal

(4) A head who fails to give the notice required under section 26 or section 28(7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice would have been given.

Copy of record

30(1) Subject to subsection (2), a person who is given access to a record or a part thereof under this Act shall be given a copy thereof unless it would not be reasonably practicable to reproduce the record or part thereof by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part thereof in accordance with the regulations.

Access to original record

(2) Where a person requests the opportunity to examine a record or a part thereof and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part thereof in accordance with the regulations.

Copy of part

(3) Where a person examines a record or a part thereof and wishes to have portions of it copied, the person shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature.

Division 4

Information to be Published or Available

Publication of
information re
institutions

31 The responsible minister shall cause to be published annually a compilation listing all institutions and, in respect of each institution, setting out,

- (a) where a request for a record should be made;
- (b) the name and office of the head of the institution;
- (c) where the material referred to in sections 32, 33, 34 and 45 has been made available; and
- (d) whether the institution has a library or reading room which is available for public use, and if so, its address.

Operations of
institutions

32 The responsible minister shall cause to be published annually an indexed compilation containing,

- (a) a description of the organization and responsibilities of each institution including details of the programs and functions of each division or branch of each institution;
- (b) a list of the general classes or types of records prepared by or in the custody or control of each institution;
- (c) the title, business telephone number and business address of the head of each institution; and
- (d) any amendment of information referred to in clause (a), (b), or (c) that has been made available in accordance with this section.

Institution
documents

33(1) A head shall make available, the manner described in section 35,

- (a) manuals, directives or guidelines prepared by the institution, issued to its officers and containing interpretations of the provisions of any enactment or scheme administered by the institution where the interpretations are to be applied by, or are to be guidelines for, any officer who determines,

(i) an application by a person for a right, privilege or benefit which is conferred by the enactment or scheme,

(ii) whether to suspend, revoke or impose new conditions on a right, privilege or benefit already granted to a person under the enactment or scheme, or

(iii) whether to impose an obligation or liability on a person under the enactment or scheme; or

(b) instructions to, and guidelines for, officers of the institution on the procedures to be followed, the methods to be employed or the objectives to be pursued in their administration or enforcement of the provisions of any enactment or scheme administered by the institution that affects the public.

Deletions

(2) A head may delete from a document made available under subsection (1) any record or part of a record which the head would be entitled to refuse to disclose where the head included in the document,

(a) a statement of the fact that a deletion has been made;

(b) a brief statement of the nature of the record which has been deleted; and

(c) a reference to the provision of this Act on which the head relies.

Annual report of head

34(1) A head shall make an annual report, in accordance with subsection (2), to the Commissioner.

Contents of report

(2) A report made under subsection (1) shall specify,

(a) the number of requests under this Act for access to records made to the institution;

(b) the number of refusals by the head to disclose a record, the provisions of this Act under which the disclosure was refused and the number of occasions on which each provision was invoked;

(c) for each provision of the Act in respect of which an appeal of a decision of a head has been commenced, the

number of appeals commenced;

(d) the number of uses or purposes for which personal information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth under section 45(d) and (e);

(e) the amount of fees collected by the institution under section 57; and

(f) any other information indicating an effort by the institution to put into practice the purposes of this Act.

Documents made
available

35(1) The responsible minister shall cause the materials described in sections 31, 32, and 45 to be made generally available for inspection and copying by the public and shall cause them to be made available to the public in the reading room, library or office designated by each institution for this purpose.

Idem

(2) Every head shall cause the materials described in sections 33 and 34 to be made available to the public in the reading room, library or office designated by each institution for this purpose.

Information from
heads

36 Every head shall provide to the responsible minister at the responsible minister's request, the information needed by the responsible minister to prepare the materials described in sections 31, 32, and 45.

PART 3

PROTECTION OF INDIVIDUAL PRIVACY

Division 1

Collection and Retention of Personal Information

Application of
Part

37 This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

Definition

38(1) In this section and in section 39, "personal information" includes information that is not recorded and that is otherwise defined as "personal information" under this Act.

Collection of
personal
information

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

Manner of
collection

39(1) Personal information shall only be collected by an institution directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 42;
- (c) the Commissioner has authorized the manner of collection under section 59(c);
- (d) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
- (e) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;
- (f) the information is collected for the purpose of law enforcement; or
- (g) another manner of collection is authorized by or under a statute.

Notice to
individual

(2) Where personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of a public official who can answer the individual's questions about the collection.

Exception	(3) Subsection (2) does not apply where the head may refuse to disclose the personal information under section 14(1) or (2).
Retention of personal information	40(1) Personal information that has been used by an institution shall be retained after use by the institution for the periods prescribed by regulation in order to ensure that the individual to whom it relates has reasonable opportunity to obtain access to the personal information.
Standard of accuracy	(2) The head of an institution shall take reasonable steps to ensure that personal information on the records of the institution is not used unless it is accurate and up to date.
Exception	(3) Subsection (2) does not apply to personal information collected for law enforcement purposes, <ul style="list-style-type: none"> (a) where the recipient works for an institution involved in law enforcement; or (b) where the head of the institution informs the recipient of the information that it may not be reliable.
Disposal of personal information	(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations and in accordance with any directives or guidelines issued by the responsible minister.

Division 2

Use and Disclosure of Personal Information

Use of personal information	<p>41 An institution shall not use personal information in its custody or under its control except,</p> <ul style="list-style-type: none"> (a) where the person to whom the information relates has identified that information in particular and consented to its use; (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or (c) for a purpose for which the information may be disclosed to the institution under section 42.
-----------------------------	--

Where disclosure
permitted

42 An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part II;
- (b) where the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where the disclosure is necessary and proper in the discharge of the institution's functions;
- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;
- (f) where disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) where disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of the individual who is injured, ill or deceased;
- (j) to a member of the Legislative Assembly who has been authorized by a constituent to whom the Information relates

to make an inquiry on the constituent's behalf or, where the constituent is incapacitated, has been authorized by the next of kin or legal representative of the constituent;

(k) to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf or, where the employee is incapacitated, has been authorized by the next-of-kin or legal representative of the employee;

(l) to the Auditor General;

(m) to the Ombudsman;

(n) to the responsible minister;

(o) to the Information and Privacy Commissioner;

(p) to the Government of Canada in order to facilitate the auditing of shared cost programs;

(q) to the Archives of Alberta; and

(r) to Statistics Canada.

Consistent
purpose

43 Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under sections 41(b) and 42(c) only if the individual might reasonably have expected such a use or disclosure.

Division 3

Personal Information Banks

Personal
information banks

44 A head shall cause to be included in a personal information bank all personal information under the control of the institution that is organized or intended to be retrieved by the individual's name or by an identifying number, symbol or other particular assigned to the individual.

Personal

45 The responsible minister shall publish at least once each year

information bank
index

an index of all personal information banks setting forth, in respect of each personal information bank,

- (a) its name and location;
- (b) the legal authority for its establishment;
- (c) the types of personal information maintained in it;
- (d) the principal uses of the personal information and the typical categories of users to whom disclosures from the system are made;
- (e) any other uses and purposes for which personal information bank is used or disclosed on a regular basis;
- (f) the categories of individuals for whom records are maintained in the system;
- (g) the policies and practices applicable to the system with respect to storage, retrievability, access controls, retention and disposal of personal information maintained in the system; and
- (h) the title, business address and business telephone number of the official responsible for the operation of the personal information bank.

Retention of
record of use

46(1) A head shall retain a record of any use by the institution of the personal information contained in a personal information bank and of any use or purpose for which the information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth under section 45(d) and (e) and shall attach or link the record of use to the personal information.

Record of use part
of personal
information

(2) A record retained under subsection (1) forms part of the personal information to which it is attached or linked.

Notice and
publication

(3) Where the personal information in a personal information bank under the control of an institution is used or disclosed for a use consistent with the purpose for which the information was obtained or compiled by the institution but the use is not one of the uses included under section 45(d) and (e), the head shall,

- (a) forthwith notify the responsible minister of the use or

disclosure; and

(b) ensure that the use is included in the index.

Division 4

Right of Individual to Whom Personal Information Relates to Access and Correction

Right of access to
personal
information

47(1) Every individual has a right of access to,

(a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and

(b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

Right of correction

(2) Every individual who is given access under subsection (1) to personal information is entitled to

(a) request correction of the personal information where the individual believes there is an error or omission therein;

(b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and

(c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required to be notified of the correction or statement of disagreement.

Request

48(1) An individual seeking access to personal information about the individual shall make a request therefor in writing to the institution that the individual believes has custody or control of the personal information and shall identify the personal information bank or otherwise identify the location of the personal information.

Access procedures	(2) Sections 10(2) and 24(2) and sections 25, 26, 27, 28 and 29 apply with necessary modifications to a request made under subsection (1).
Manner of access	<p>(3) Subject to the regulations, where an individual is to be given access to personal information requested under subsection (1), the head shall,</p> <p>(a) permit the individual to examine the personal information; or</p> <p>(b) provide the individual with a copy thereof.</p>
Comprehensible form	(4) Where access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information is sorted and used.
Exemptions	<p>49 A head may refuse to disclose to the individual to whom the information relates personal information,</p> <p>(a) where section 5, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information;</p> <p>(b) where the disclosure would constitute an unjustified invasion of another individual's personal privacy;</p> <p>(c) that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits where the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably be assumed that the identity of the source would be held in confidence;</p> <p>(d) that is medical information where the disclosure could reasonably be expected to prejudice the mental or physical health of the individual;</p> <p>(e) that is a correctional record where the disclosure could reasonably be expected to reveal information supplied in confidence; or</p>

- (f) that is research or statistical record.

PART 4

APPEALS

Right to appeal	<p>50(1) A person who has made a request for,</p> <ul style="list-style-type: none">(a) access to a record under section 24(1);(b) access to personal information under section 48(1); or(c) correction of personal information under section 47(2). <p>or a person who is given notice of a request under section 28(1) may appeal any decision of a head under this Act to the Commissioner.</p>
Time for application	<p>(2) An appeal under subsection (1) shall be made within 30 days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal.</p>
Notice of application for appeal	<p>(3) Upon receiving a notice of appeal, the Commissioner shall inform the head of the institution concerned and any other affected person of the notice of appeal.</p>
Application of R.S.A. 1980, c.0-7	<p>(4) The <i>Ombudsman Act</i> does not apply in respect of a complaint for which an appeal is provided for under this Act or to the Commissioner or the Commissioner's delegate acting under this Act.</p>
Mediator to try to effect settlement	<p>51 The Commissioner may authorize a mediator to investigate the circumstances of any appeal and to try to effect a settlement of the matter under appeal.</p>
Inquiry	<p>52(1) Where a settlement is not effected under section 51, the Commissioner shall conduct an inquiry to review the head's decision.</p>
Inquiry to be held in public; exception	<p>(2) (a) The inquiry shall be held in public, unless one of the interested parties, including the Commissioner, objects or requests that the hearing be conducted in private.</p>

(b) Any decision to conduct and inquiry in private may be appealed by any party.

Powers of
Commissioner

(3) In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts II and III of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation.

Record not
retained by
Commissioner

(4) The Commissioner shall not retain any information obtained from a record under subsection (4).

Examination of
site

(5) Despite subsection (4), a head may require that the examination of a record by the Commissioner be of the original at its site.

Notice of entry

(6) Before entering any premises under subsection (4), the Commission shall notify the head of the institution occupying the premises of his or her purpose.

Examination
under oath

(7) The Commissioner may summon and examine on oath any person who, in the Commissioner's opinion, may have information relating to the inquiry, and for that purpose the Commissioner may administer an oath.

Evidence
privileged

(8) Anything said or any information supplied or any document or thing produced by a person in the course of an inquiry by the Commissioner under this Act is privileged in the same manner as if the inquiry were a proceeding in a court.

Protection

(9) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by the Commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.

Idem under R.S.C.
1970, c.E-10

(10) Any person giving a statement in the course of an inquiry before the Commissioner shall be informed of his or her right to object to answer any question under section 5 of the *Canada Evidence Act*.

Prosecution

(11) No person is liable to prosecution for an offence against

any Act, other than this Act, by reason of his or her compliance with a requirement of the Commissioner under this section.

Representations	(12) The person who requested access to the record, the head of the institution concerned and any affected party shall be given an opportunity to make representations to the Commissioner, but no person is entitled to be present during, to have access to or to comment on representations made to the Commissioner by any other person.
Right to Counsel	(13) The person who requested access to the record, the head of the institution concerned and any affected party may be represented by counsel or an agent.
Burden of proof	53 Where a head refuses access to a record or a part of a record, the burden of proof that the record or the part falls within one of the specified exemptions in this Act lies upon the head.
Order	54(1) After all of the evidence for an inquiry has been received, the Commissioner shall make an order disposing of the issues raised by the appeal.
Idem	(2) Where the Commissioner upholds a decision of a head that the head may refuse to disclose a record or a part of a record, the Commissioner shall not order the head to disclose the record or part.
Terms and conditions	(3) The Commissioner's order may contain any terms and conditions the Commissioner considers appropriate.
Notice of order	(4) The Commissioner shall give the appellant and the persons who received notice of the appeal under section 50(3) written notice of the order.
Confidentiality	55(1) The Commissioner or any person acting on behalf of or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their powers, duties and functions under this Act.
Not compellable witness	(2) The Commissioner or any person acting on behalf of or under the direction of the Commissioner is not compellable to give evidence in a court or a proceeding of a judicial nature concerning anything coming to their knowledge in the exercise or performance of a power, duty or function under this Act.

Proceedings
privileged

(3) No proceeding lies against the Commissioner or against any person acting on behalf or under the direction of the Commissioner for anything done, reported, or said in good faith in the course of the exercise or performance or purported exercise or performance of a power, duty or function under this Act.

Delegation by
Commissioner

56(1) The Commissioner may in writing delegate a power or duty granted to or vested in the Commissioner to an officer or officers employed by the Commissioner, except the power to delegate under this section, subject to such limitations, restrictions, conditions and requirements as the Commissioner may set out in the delegation.

Exception re
records under s. 12
or 14

(2) The Commissioner shall not delegate to a person other than the Assistant Information Commissioner or the Assistant Privacy Commissioner his or her power to require a record referred to in section 12 or 14 to be produced or examined.

PART 5

DISPOSAL OF DOCUMENTS

57(1) In this Part

(a) "deposited" includes filed, registered, recorded and kept;

(b) "document" means a departmental record or a Ministers record but does not include a Ministers personal notes or diaries;

(c) "ministerial office" means any office in or under the ministries, branches and institutions of the Executive Government of the Province, other than a record office;

(d) "record office" means a prescribed timetable that

(i) describes a document's lifespan from the date on which it was created to the date of its final disposition, including the periods of its active and dormant stages either as waste or as

a document of legal or historical value to be permanently preserved, and

(ii) provides instructions as to the manner and time of the disposition of a document under this Act.

Power to dispose
of valueless
documents

58 The officer in charge or having the custody of the documents deposited in any ministerial office or record office may, subject to the regulations and to every approval required by this Act, destroy or otherwise dispose of the documents deposited which are not considered of sufficient public value to justify their preservation.

Approvals
required

59(1) No document shall be destroyed except on the written recommendation of a committee to be known as the Public Documents Committee, which consists of the Provincial Archivist, 2 persons, who may be members of the Legislative Assembly, appointed by the Leader of Her Majesty's Loyal Opposition and 2 other persons to be named by the Lieutenant Governor in Council.

(2) No document shall be destroyed before the expiration of 7 years from the date on which it was created unless

(a) years have expired from the date on which it was created and there is available to the officer who would, but for the destruction, have charge or custody of the document a microfilm copy of it;

(b) a recommendation under subsection (1) has been approved by the Legislative Assembly on the recommendation of the Select Standing Committee of the Legislative Assembly on Public Accounts ; or

(c) it is

(i) listed in a records schedule approved by the Select Standing Committee of the Legislative Assembly on Public Accounts, and

(ii) destroyed in accordance with the instructions in the records schedule.

(3) Subject to subsections (1) and (2), the Lieutenant

Governor in Council may, on the recommendation of the minister having jurisdiction over the ministry concerned, order

(a) that any public document or any class or series of documents then in charge of this ministry be transferred to the archives or Provincial Library immediately or on the expiration of the periods after the dates at which they were created as are specified in the order; and

(b) that any public document or class or series of documents then in the charge of the ministry be destroyed immediately or on the expiration of the periods after the dates at which they were created as are specified in the order.

(4) No document deposited in a record office shall be destroyed without the approval of the Attorney General, and, in the case of an office of the Court of Appeal, without the further approval of the Chief Justice of the Court of Appeal, and, in the case of an office of the Court of Queen's Bench, without the further approval of the Chief Justice of the Court of Queen's Bench.

(5) Every approval under subsection (4) shall be in writing, and shall designate the document to be disposed of, and shall be kept on file in the ministerial office, or record office to which it relates.

Municipality may
deposit documents
in archives

60 Any municipality, village municipality or school district may, with the consent of the Provincial Archivist, deposit any of its noncurrent records or other documents with him for preservation in the archives.

Certified copy
evidence

61 A copy or photographic reproduction of any document in the archives certified under the hand of the Provincial Archivist to be a true copy shall be evidence of the authenticity and correctness of the copy or reproduction without proof of the appointment or signature of the Provincial Archivist.

Regulations

62 The Lieutenant Governor in Council may make regulations, including regulations

(a) designating and establishing classes and series for the purposes of section 59(3),

(b) respecting the transfer, destruction or other disposition of documents or classes or series of documents under section 59(3), and

(c) prescribing the form and content of records schedules.

PART 6

GENERAL

Costs

63(1) Where no provision is made for a charge or fee under any other Act, a head may require the person who makes a request for access to a record or for correction of a record to pay,

(a) a search charge for every hour of manual search required in excess of 2 hours to locate a record;

(b) the costs of preparing the record for disclosure;

(c) computer and other costs incurred in locating, retrieving, processing and copying a record; and

(d) shipping costs.

Estimate of costs

(2) The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25.

Waiver of payment

(3) A head may waive the payment of all or any part of an amount required to be paid under this Act where, in the head's opinion, it is fair and equitable to do so after considering,

(a) the extent to which the actual cost of processing, collecting, and copying the record varies from the amount of the payment required by subsection (1);

(b) whether the payment will cause a financial hardship for the person requesting the record;

(c) whether dissemination of the record will benefit public health or safety;

(d) whether the record contains personal information relating to the person who requested it; and

(e) any other matter prescribed in the regulations.

Review

(4) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the head's decision to charge a fee or the amount of the fee.

Disposition of payments

(5) The costs provided in this section shall be paid and distributed in the manner prescribed in the regulations.

Annual report of Commissioner

64(1) The Commissioner shall make an annual report, in accordance with subsection (2), to the Speaker of the Legislative Assembly who shall cause the report to be laid before the Assembly if it is then sitting or, if not, within 15 days of the commencement of the next sitting.

Contents of report

(2) A report made under subsection (1) shall provide a comprehensive review of the effectiveness of this Act in providing access to information and protection of personal privacy including,

(a) a summary of the nature and ultimate resolutions of appeals carried out under section 50(1);

(b) an assessment of the extent to which institutions are complying with this Act; and

(c) the Commissioner's recommendations with respect to the practices of particular institutions and with respect to proposed revisions to this Act and regulations.

Powers and duties of Commissioner

65 The Commissioner may,

(a) offer comment on the privacy protection implications of proposed legislative schemes or government programs;

(b) after hearing the head, order an institution to,

(i) cease a collection practice, and

(ii) destroy collections of personal information,

that contravene this Act;

- (c) in appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual;
- (d) engage in or commission research into matters affecting the carrying out of the purposes of this Act;
- (e) conduct public education programs and provide information concerning this Act and the Commissioner's role and activities; and
- (f) receive representations from the public concerning the operation of this Act.

Regulations

66 The Lieutenant Governor in Council may make regulations,

- (a) respecting the procedures for access to original records under section 30;
- (b) respecting the procedures for access to personal information under subsection 48(3);
- (c) prescribing the circumstances under which records capable of being produced from machine readable records are not included in the definition of "record" for the purposes of this Act;
- (d) setting standards for and requiring administrative, technical and physical safeguards to ensure the security and confidentiality of records and personal information under the control of institutions;
- (e) setting standards for the accuracy and completeness of personal information that is under the control of an institution;
- (f) prescribing time periods for the purposes of subsection 40(1);
- (g) prescribing the payment and allocation of fees received under section 57;
- (h) prescribing matters to be considered in determining whether to waive all or part of the costs required under section 57;

(i) designating any agency, board, commission, corporation or other body as an institution and designating a head for each such institution;

(j) prescribing forms and providing for their use;

(k) respecting any matter the Lieutenant Governor in Council considers necessary to carry out effectively the purposes of this Act.

Offences

67(1) No person shall,

(a) wilfully disclose personal information in contravention of this Act;

(b) wilfully maintain a personal information bank that contravenes this Act;

(c) make a request under this Act for access to or correction of personal information under false pretences;

(d) wilfully obstruct the Commissioner in the performance of his or her functions under this Act;

(e) wilfully make a false statement to, mislead or attempt to mislead the Commissioner in the performance of his or her functions under this Act; or

(f) wilfully fail to comply with an order of the Commissioner.

Penalty

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine not exceeding \$5000.

**Consent of
Attorney General**

(3) A prosecution shall not be commenced under subsection (1)(d), (e) or (f) without the consent of the Attorney General.

67.1 An order of the commissioner may be entered with the Clerk of the Court of Queen's Bench.

**Delegation of
head's powers**

68(1) A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation.

Protection from civil proceeding	(2) No action or other proceeding lies against a head, or against a person acting on behalf or under the direction of the head, for damages resulting from the disclosure or non-disclosure in good faith of a record or any part of a record under this Act, or from the failure to give a notice under this Act if reasonable care is taken to give the reasonable notice.
Vicarious liability of Crown preserved	(3) Subsection (2) does not by reason of the <i>Proceedings Against the Crown Act</i> relieve the Crown of liability in respect of tort committed by a person mentioned in subsection (2) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (2) had not been enacted.
Vicarious liability of certain institutions preserved	(4) Subsection (2) does not relieve an institution of liability in respect of a tort committed by a person mentioned in subsection (2) to which it would otherwise be subject and the institution is liable for any such tort in a like manner as if subsection (2) had not been enacted.
Oral requests	69(1) Where a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request.
Pre-existing access preserved	(2) This Act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by custom or practice immediately before this Act comes into force.
Crown privilege	70(1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation.
Powers of courts and tribunals	(2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document.
Application of Act	71(1) This Act does not apply to records placed in the Archives of Alberta by or on behalf of a person or organization other than an institution.
Idem	(2) This Act does not apply to a record in respect of a patient in a facility as defined by the <i>Mental Health Act</i> , where the record, <p>(a) is a clinical record; or</p>

(b) contains information in respect of the history, assessment, diagnosis, observation, examination, care or treatment of the patient.

Idem

(3) This Act does not apply to notes prepared by or for a person presiding in a proceeding in a court of Alberta if those notes are prepared for that person's personal use in connection with the proceeding.

*Exercise of rights
of deceased, etc.,
persons*

72 Any right or power conferred on an individual by this Act may be exercised,

(a) where the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;

(b) where a committee has been appointed for the individual or where the Public Trustee has become the individual's committee, by the committee; and

(c) where the individual is less than 16 years of age, by a person who has lawful custody of the individual.

*Review of other
Acts*

73(1) A standing committee appointed by the Legislative Assembly for the purpose of this Act shall undertake a comprehensive review of all confidentiality provisions contained in Acts in existence on the day this Act comes into force and shall make recommendations to the Legislative Assembly regarding,

(a) the repeal of unnecessary or inconsistent provisions; and

(b) the amendment of provisions that are inconsistent with this Act.

Other Acts

(2) This Act prevails over a confidentiality provision in any other Act unless the other Act specifically provides otherwise.

(3) Subsection (2) shall not have effect until 2 years after this section comes into force.

Review of this Act

(4) The standing committee shall, within 3 years after commencement of this Act, undertake a comprehensive review of this Act and shall, within one year after beginning that review, make recommendations to the Legislative Assembly regarding amendments to this Act.

R.S.A. 198 c.P-31	74 <i>The Public Service Act is amended in section 20 by adding "or as required by law" after "authorization" in subsections (1) and (2).</i>
Application	75 This Act applies to any record in the custody or under the control of an institution regardless of whether it was recorded before or after this Act comes into force.
Crown bound	76 This Act binds the Crown.
Commencement	77 This Act comes into force on Proclamation.