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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 18

**FREEDOM OF INFORMATION AND
PROTECTION OF PRIVACY ACT**

THE PREMIER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 18

1994

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

(Assented to , 1994)

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

Definitions

1 In this Act,

- (a) “adjudicator” means a person designated under section 70;
- (b) “applicant” means a person who makes a request for access to a record under section 7(1);
- (c) “Commissioner” means the Information and Privacy Commissioner appointed under Part 3;
- (d) “educational body” means
 - (i) a university as defined in the *Universities Act*,
 - (ii) a technical institute as defined in the *Technical Institutes Act*,
 - (iii) a public or private college as defined in the *Colleges Act*,
 - (iv) the Banff Centre as defined in the *Banff Centre Act*,
or
 - (v) a board as defined in the *School Act*;
- (e) “employee”, in relation to a public body, includes a person retained under a contract to perform services for the public body;

- (f) “head”, in relation to a public body, means
- (i) if the public body is a department, branch or office of the Government of Alberta, the member of the Executive Council who presides over it,
 - (ii) if the public body is a local public body, the person or group of persons designated under section 88(a) as the head, and
 - (iii) in any other case, the chief executive officer of the public body;
- (g) “health care body” means
- (i) an approved hospital as defined in the *Hospitals Act*,
 - (ii) a hospital as defined in the *Provincial General Hospitals Act*,
 - (iii) a local board as defined in the *Public Health Act*, or
 - (iv) a nursing home as defined in the *Nursing Homes Act*;
- (h) “law enforcement” means
- (i) policing, including criminal intelligence operations,
 - (ii) investigations that lead or could lead to a penalty or sanction being imposed, or
 - (iii) proceedings that lead or could lead to a penalty or sanction being imposed;
- (i) “local government body” means
- (i) a municipality as defined in the *Municipal Government Act*,
 - (ii) a county as defined in the *County Act*,
 - (iii) an improvement district as defined in the *Improvement Districts Act*,
 - (iv) a new town as defined in the *New Towns Act*,
 - (v) a town as defined in the *Parks Towns Act*,
 - (vi) a special area as defined in the *Special Areas Act*,

- (vii) the Municipality of Crowsnest Pass,
 - (viii) a regional planning commission established under the *Planning Act*,
 - (ix) a regional services commission established under the *Regional Municipal Services Act*,
 - (x) a Metis settlement established under the *Metis Settlements Act*, or
 - (xi) any board, committee, commission, panel, agency or corporation that is created or owned by a body referred to in subclauses (i) to (x) and all the members or officers of which are appointed or chosen by, or under the authority of, that body;
- (j) “local public body” means
- (i) an educational body,
 - (ii) a health care body, or
 - (iii) a local government body;
- (k) “Minister” means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;
- (l) “offence” means an offence under an enactment of Alberta or Canada;
- (m) “officer of the Legislature” means the Auditor General, the Ombudsman, the Chief Electoral Officer, the Ethics Commissioner or the Information and Privacy Commissioner;
- (n) “personal information” means recorded information about an identifiable individual, including
- (i) the individual’s name, home or business address or home or business telephone number,
 - (ii) the individual’s race, national or ethnic origin, colour or religious or political beliefs or associations,
 - (iii) the individual’s age, sex, marital status or family status,

- (iv) an identifying number, symbol or other particular assigned to the individual,
 - (v) the individual's fingerprints, blood type or inheritable characteristics,
 - (vi) information about the individual's health and health care history, including information about a physical or mental disability,
 - (vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,
 - (viii) anyone else's opinions about the individual, and
 - (ix) the individual's personal views or opinions, except if they are about someone else;
- (o) "prescribed" means prescribed by the regulations;
- (p) "public body" means
- (i) a department, branch or office of the Government of Alberta,
 - (ii) an agency, board, commission, corporation, office or other body designated as a public body in the regulations,
 - (iii) the Executive Council Office,
 - (iv) the Legislative Assembly Office,
 - (v) the office of the Auditor General, the Ombudsman, the Chief Electoral Officer, the Ethics Commissioner or the Information and Privacy Commissioner, or
 - (vi) a local public body,

but does not include

- (vii) the office of a member of the Legislative Assembly or the Executive Council,
- (viii) the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta, The Surrogate Court of Alberta or The Provincial Court of Alberta, or
- (ix) a treasury branch, except when it has custody or control of records that relate to non-arm's length

transactions between the Government of Alberta and another party;

- (q) “record” means a record of information in any form and includes books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records;
- (r) “third party” means a person, a group of persons or an organization other than an applicant or a public body;
- (s) “trade secret” means information, including a formula, pattern, compilation, program, device, product, method, technique or process
 - (i) that is used, or may be used, in business or for any commercial purpose,
 - (ii) that derives independent economic value, actual or potential, from not being generally known to anyone who can obtain economic value from its disclosure or use,
 - (iii) that is the subject of reasonable efforts to prevent it from becoming generally known, and
 - (iv) the disclosure of which would result in significant harm or undue financial loss or gain.

Purposes of
this Act

2 The purposes of this Act are

- (a) to allow any person a right of access to the records in the custody and under the control of a public body subject to limited and specific exceptions as set out in this Act,
- (b) to control the manner in which a public body may collect personal information from individuals, to control the use that a public body may make of that information and to control the disclosure by a public body of that information,
- (c) to allow individuals, subject to limited and specific exceptions as set out in this Act, a right of access to personal information about themselves that is held by a public body,

- (d) to allow individuals a right to request corrections to personal information about themselves that is held by a public body, and
- (e) to provide for independent reviews of decisions made by public bodies under this Act and the resolution of complaints under this Act.

Scope of this Act

3 This Act

- (a) is in addition to and does not replace existing procedures for access to information or records,
- (b) does not affect access to records
 - (i) of the Provincial Archives of Alberta, or
 - (ii) of the archives of a public body
 that were unrestricted before the coming into force of this Act,
- (c) does not limit the information otherwise available by law to a party to legal proceedings,
- (d) does not affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents, and
- (e) does not prohibit the transfer, storage or destruction of any record in accordance with any other enactment of Alberta or Canada or a by-law of a local government body.

Records to which this Act applies

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

- (a) information in a court file, a record of a judge of the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta, The Surrogate Court of Alberta or The Provincial Court of Alberta, a record of a master of the Court of Queen's Bench of Alberta, a record of a sitting justice of the peace, a judicial administration record or a record relating to support services provided to the judges of any of the courts referred to in this clause;
- (b) a personal note, communication or draft decision of a person who is acting in a judicial or quasi-judicial capacity including any authority designated by the Lieutenant

Governor in Council to which the *Administrative Procedures Act* applies;

- (c) a record that is created by or is in the custody or under the control of an officer of the Legislature and relates to the exercise of that officer's functions under an Act of Alberta;
- (d) a question that is to be used on an examination or test;
- (e) teaching materials or research information of employees of a post-secondary educational body;
- (f) material that has been placed in the Provincial Archives of Alberta or the archives of a public body by or for a person or entity other than a public body;
- (g) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed;
- (h) a record made from information
 - (i) in the Personal Property Registry,
 - (ii) in the office of the Registrar of the Motor Vehicles Division,
 - (iii) in a Land Titles Office,
 - (iv) in an office of a district registrar as defined in the *Vital Statistics Act*, or
 - (v) in a registry operated by a public body where public access to the registry is normally permitted;
- (i) a record of an elected official of a local public body that is not in the custody or under the control of the local public body.

(2) In this section, "judicial administration record" means a record containing information relating to a judge of the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta, The Surrogate Court of Alberta or The Provincial Court of Alberta or to a master of the Court of Queen's Bench of Alberta or a sitting justice of the peace, and includes

- (a) the scheduling of judges and trials,
- (b) the content of judicial training programs,
- (c) statistics of judicial activity prepared by or for a judge, and

(d) any record of the Judicial Council for the Judges of The Provincial Court of Alberta.

Relationship to
other Acts

5(1) The head of a public body must refuse to disclose information to an applicant if the disclosure is prohibited or restricted by another enactment of Alberta.

(2) If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless

(a) another Act, or

(b) a regulation under this Act

expressly provides that the other Act or regulation, or a provision of it, prevails despite this Act.

(3) Two years after section 6 comes into force, subsection (1) of this section is repealed and subsection (2) of this section comes into force.

PART 1

FREEDOM OF INFORMATION

Division 1

Obtaining Access to Records

Information
rights

6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

(3) The right of access to a record is subject to the payment of any fee required by the regulations.

How to make
a request

7(1) To obtain access to a record, a person must make a request to the public body that the person believes has custody or control of the record.

(2) A request must be in writing and must provide enough detail to enable the public body to identify the record.

(3) In a request, the applicant may ask

- (a) for a copy of the record, or
- (b) to examine the record.

Continuing
request

8(1) The applicant may indicate in a request that the request, if granted, continues to have effect for a specified period of up to 2 years.

(2) A public body granting a request that continues to have effect for a specified period must provide to the applicant

- (a) a schedule showing dates in the specified period on which the request will be deemed to have been received and explaining why those dates were chosen, and
- (b) a statement that the applicant may ask the Commissioner to review the schedule.

(3) This Act applies to a request that continues to have effect for a specified period as if a new request were made on each of the dates shown in the schedule.

Duty to assist
applicants

9(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

(2) The head of a public body must create a record for an applicant if

- (a) the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise, and
- (b) creating the record would not unreasonably interfere with the operations of the public body.

Time limit for
responding

10(1) The head of a public body must make every reasonable effort to respond to a request not later than 30 days after receiving it unless

- (a) that time limit is extended under section 13, or
- (b) the request has been transferred under section 14 to another public body.

(2) The failure of the head to respond to a request within the 30-day period or any extended period is to be treated as a decision to refuse access to the record.

Contents of
response

11(1) In a response under section 10, the applicant must be told

- (a) whether access to the record or part of it is granted or refused,
- (b) if access to the record or part of it is granted, where, when and how access will be given, and
- (c) if access to the record or to part of it is refused,
 - (i) the reasons for the refusal and the provision of this Act on which the refusal is based,
 - (ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
 - (iii) that the applicant may ask for a review of that decision by the Commissioner or an adjudicator, as the case may be.

(2) Despite subsection (1)(c)(i), the head of a public body may, in a response, refuse to confirm or deny the existence of

- (a) a record containing information described in section 17 or 19, or
- (b) a record containing personal information about a third party if disclosing the existence of the information would be an unreasonable invasion of the third party's personal privacy.

How access
will be given

12(1) If an applicant is told under section 11(1) that access will be granted, the head of the public body must comply with this section.

(2) If the applicant has asked for a copy of a record and the record can reasonably be reproduced,

- (a) a copy of the record or part of it must be provided with the response, or
- (b) the applicant must be given reasons for any delay in providing the copy.

(3) If the applicant has asked to examine a record or for a copy of a record that cannot reasonably be reproduced, the applicant

- (a) must be permitted to examine the record or part of it, or**
- (b) must be given access in accordance with the regulations.**

**Extending the
time limit for
responding**

13(1) The head of a public body may extend the time for responding to a request for up to 30 days or, with the Commissioner's permission, for a longer period if

- (a) the applicant does not give enough detail to enable the public body to identify a requested record,**
- (b) a large number of records is requested or must be searched and responding within the period set out in section 10 would unreasonably interfere with the operations of the public body,**
- (c) more time is needed to consult with a third party or another public body before deciding whether or not to grant access to a record, or**
- (d) a third party asks for a review under section 62(2) or 72(3).**

(2) If the time is extended under subsection (1), the head of the public body must tell the applicant

- (a) the reason for the extension,**
- (b) when a response can be expected, and**
- (c) that the applicant may make a complaint to the Commissioner or an adjudicator, as the case may be, about the extension.**

**Transferring a
request**

14(1) Within 15 days after a request for access to a record is received by a public body, the head of the public body may transfer the request and, if necessary, the record to another public body if

- (a) the record was produced by or for the other public body,**
- (b) the other public body was the first to obtain the record, or**
- (c) the record is in the custody or under the control of the other public body.**

(2) If a request is transferred under subsection (1),

- (a) the head of the public body who transferred the request must notify the applicant of the transfer as soon as possible, and
- (b) the head of the public body to which the request is transferred must make every reasonable effort to respond to the request not later than 15 days after receiving the request unless that time limit is extended under section 13.

Division 2 Exceptions to Disclosure

Disclosure
harmful to
business
interests of a
third party

15(1) The head of a public body must refuse to disclose to an applicant information

- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of a third party,
- (b) that is supplied, explicitly or implicitly, in confidence, and
- (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
 - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
 - (iii) result in undue financial loss or gain to any person or organization, or
 - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

(2) The head of a public body must refuse to disclose to an applicant information that was collected on a tax return or collected for the purpose of determining tax liability or collecting a tax.

(3) Subsections (1) and (2) do not apply if

- (a) the third party consents to the disclosure,

- (b) an enactment of Alberta or Canada authorizes or requires the information to be disclosed,
- (c) the information relates to a non-arm's length transaction between the Government of Alberta and another party, or
- (d) the information is in a record that is in the custody or under the control of the Provincial Archives of Alberta or the archives of a public body and has been in existence for 50 years or more.

Disclosure
harmful to
personal
privacy

16(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,
- (b) the personal information 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) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,
- (d) the personal information relates to employment or educational history,
- (e) the personal information was collected on a tax return or gathered for the purpose of collecting a tax,
- (f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,
- (g) the personal information consists of the third party's name when
 - (i) it appears with other personal information about the third party, or
 - (ii) the disclosure of the name itself would reveal personal information about the third party,

or

- (h) the personal information indicates the third party's racial or ethnic origin, or religious or political beliefs or associations.

(3) In determining under subsection (1) or (2) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,
- (b) the disclosure is likely to promote public health and safety or the protection of the environment,
- (c) the personal information is relevant to a fair determination of the applicant's rights,
- (d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,
- (e) the third party will be exposed unfairly to financial or other harm,
- (f) the personal information has been supplied in confidence,
- (g) the personal information is likely to be inaccurate or unreliable, and
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

- (a) the third party has, in writing, consented to or requested the disclosure,
- (b) there are compelling circumstances affecting anyone's health or safety and notice of the disclosure is mailed to the last known address of the third party,
- (c) an Act of Alberta or Canada authorizes or requires the disclosure,
- (d) the disclosure is for research purposes and is in accordance with section 40,

- (e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council,
- (f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body,
- (g) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body,
- (h) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body, or
- (i) the personal information is about an individual who has been dead for 25 years or more.

Disclosure
harmful to
individual or
public safety

17(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

- (a) threaten anyone else's safety or mental or physical health,
or
- (b) interfere with public safety.

(2) The head of a public body may refuse to disclose to an applicant personal information about the applicant if, in the opinion of an expert, the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's health or safety.

Confidential
evaluations

18 The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled solely for the purpose of determining the applicant's suitability, eligibility or qualifications for employment or for the awarding of government contracts or other benefits when the information is provided, explicitly or implicitly, in confidence.

Disclosure
harmful to law
enforcement

19(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

- (a) harm a law enforcement matter,

- (b) prejudice the defence of Canada or of any foreign state allied to or associated with Canada or harm the detection, prevention or suppression of espionage, sabotage or terrorism,
 - (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,
 - (d) reveal the identity of a confidential source of law enforcement information,
 - (e) deprive a person of the right to a fair trial or impartial adjudication,
 - (f) reveal a record that has been confiscated from a person by a peace officer in accordance with a law,
 - (g) facilitate the escape from custody of an individual who is being lawfully detained,
 - (h) facilitate the commission of an unlawful act or hamper the control of crime,
 - (i) reveal technical information relating to weapons or potential weapons,
 - (j) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system, or
 - (k) reveal information in a correctional record supplied, explicitly or implicitly, in confidence.
- (2) The head of a public body may refuse to disclose information to an applicant if the information
- (a) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or an individual who has been quoted or paraphrased in the record, or
 - (b) is about the history, supervision or release of an individual who is under the control or supervision of a correctional authority and the disclosure could reasonably be expected to harm the proper custody or supervision of that person.
- (3) The head of a public body must refuse to disclose information to an applicant if the information is in a law enforcement record and the disclosure would be an offence under an Act of Canada.

(4) Subsections (1) and (2) do not apply to

- (a) a report prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an Act of Alberta, or
- (b) a report, including statistical analysis, on the degree of success achieved in a law enforcement program unless disclosure of the report could reasonably be expected to interfere with or harm any of the matters referred to in subsection (1) or (2).

(5) After a police investigation is completed, the head of a public body must not refuse to disclose under this section the reasons for a decision not to prosecute

- (a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim, or
- (b) to any other member of the public, if the fact of the investigation was made public.

Disclosure
harmful to
intergovern-
mental
relations

20(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

- (a) harm relations between the Government of Alberta or its agencies and any of the following or their agencies:
 - (i) the Government of Canada or a province or territory of Canada,
 - (ii) a local public body,
 - (iii) the government of a foreign state, or
 - (iv) an international organization of states,

or

- (b) reveal information supplied, explicitly or implicitly, in confidence by a government, local public body or an organization listed in clause (a) or its agencies.

(2) The head of a public body may disclose information referred to in subsection (1)(a) only with the consent of the Minister in consultation with the Executive Council.

(3) The head of a public body may disclose information referred to in subsection (1)(b) only with the consent of the government, local public body or organization that supplies the information, or its agency.

(4) This section does not apply to information that has been in existence in a record for 15 years or more.

Cabinet and
Treasury
Board
confidences

21(1) The head of a public body must refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees or of the Treasury Board or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees or to the Treasury Board or any of its committees.

(2) Subsection (1) does not apply to

- (a) information in a record that has been in existence for 15 years or more,
- (b) information in a record of a decision made by the Executive Council or any of its committees on an appeal under an Act, or
- (c) information in a record the purpose of which is to present background facts to the Executive Council or any of its committees or to the Treasury Board or any of its committees for consideration in making a decision if
 - (i) the decision has been made public,
 - (ii) the decision has been implemented, or
 - (iii) 5 years or more have passed since the decision was made or considered.

Local public
body
confidences

22(1) The head of a local public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal

- (a) a draft of a resolution, by-law or other legal instrument by which the local public body acts, or
- (b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act

authorizes the holding of that meeting in the absence of the public.

(2) Subsection (1) does not apply if

- (a) the draft of the resolution, by-law or other legal instrument or the subject matter of the deliberation has been considered in a meeting open to the public, or
- (b) the information referred to in that subsection is in a record that has been in existence for 15 years or more.

Advice from
officials

23(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal

- (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council,
- (b) consultations or deliberations involving
 - (i) officers or employees of a public body,
 - (ii) a member of the Executive Council, or
 - (iii) the staff of a member of the Executive Council,
- (c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Alberta or a public body, or considerations that relate to those negotiations,
- (d) plans relating to the management of personnel or the administration of a public body that have not yet been implemented,
- (e) the contents of draft legislation, regulations and orders of members of the Executive Council or the Lieutenant Governor in Council,
- (f) the contents of agendas or minutes of meetings of an agency, board, commission, corporation, office or other body that is a public body, or
- (g) information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

(2) This section does not apply to information that

- (a) has been in existence for 15 years or more,
- (b) is a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function,
- (c) is the result of product or environmental testing carried out by or for a public body, unless the testing was done
 - (i) for a fee as a service to a person other than a public body, or
 - (ii) for the purpose of developing methods of testing or testing products for possible purchase,
- (d) is a statistical survey,
- (e) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal,
- (f) is an instruction or guideline issued to the officers or employees of a public body, or
- (g) is a substantive rule or statement of policy that has been adopted by a public body for the purpose of interpreting an Act or regulation or administering a program or activity of the public body.

Disclosure
harmful to
economic and
other interests
of a public
body

24(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the economic interest of a public body or the Government of Alberta or the ability of the Government to manage the economy, including the following information:

- (a) trade secrets of a public body or the Government of Alberta;
- (b) financial, commercial, scientific, technical or other information in which a public body or the Government of Alberta has a proprietary interest or a right of use and that has, or is reasonably likely to have, monetary value;
- (c) information the disclosure of which could reasonably be expected to
 - (i) result in financial loss to,

- (ii) prejudice the competitive position of, or
 - (iii) interfere with contractual or other negotiations of,
- the Government of Alberta or a public body;
- (d) scientific or technical information obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee or public body of priority of publication.
- (2)** The head of a public body must not refuse to disclose under subsection (1) the results of product or environmental testing carried out by or for a public body, unless the testing was done
- (a) for a fee as a service to a person, other than the public body, or
 - (b) for the purpose of developing methods of testing or testing products for possible purchase.

Testing
procedures,
tests and
audits

25 The head of a public body may refuse to disclose to an applicant information relating to

- (a) testing or auditing procedures or techniques, or
- (b) details of specific tests to be given or audits to be conducted,

if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits.

Privileged
information

26(1) The head of a public body may refuse to disclose to an applicant

- (a) information that is subject to any type of legal privilege, including solicitor-client privilege,
- (b) information prepared by or for an agent or lawyer of the Minister of Justice and Attorney General or a public body in relation to a matter involving the provision of legal services, or
- (c) information in correspondence between an agent or lawyer of the Minister of Justice and Attorney General or a public body and any other person in relation to a matter involving the provision of advice or other services by the agent or lawyer.

(2) The head of a public body must refuse to disclose information described in subsection (1)(a) that relates to a person other than a public body.

Disclosure harmful to the conservation of heritage sites, etc.

27 The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to result in damage to or interfere with the conservation of

- (a) fossil sites, natural sites or sites that have an anthropological or heritage value, or
- (b) any rare, endangered, threatened or vulnerable form of life.

Information that is or will be available to the public

28(1) The head of a public body may refuse to disclose to an applicant information

- (a) that is available for purchase by the public, or
- (b) that is to be published or released to the public within 60 days after the applicant's request is received.

(2) The head of a public body must notify an applicant of the publication or release of information that the head has refused to disclose under subsection (1)(b).

(3) If the information is not published or released within 60 days after the applicant's request is received, the head of the public body must reconsider the request as if it were a new request received on the last day of that period, and access to the information requested must not be refused under subsection (1)(b).

Division 3 Third Party Intervention

Notifying the third party

29(1) When the head of a public body is considering giving access to a record that may contain information

- (a) that affects the interests of a third party under section 15, or
- (b) the disclosure of which would be an unreasonable invasion of a third party's personal privacy under section 16,

the head must, subject to section 28, where practicable and as soon as practicable, give written notice to the third party in accordance with subsection (3).

(2) If the head of a public body does not intend to give access to a record that contains information excepted from disclosure under section 15 or 16, the head may give written notice to the third party in accordance with subsection (3).

(3) A notice under this section must

- (a) state that a request has been made for access to a record that may contain information the disclosure of which would affect the interests or invade the personal privacy of the third party,
- (b) include a copy of the record or part of it containing the information in question or describe the contents of the record, and
- (c) state that, within 20 days after the notice is given, the third party may, in writing, consent to the disclosure or make representations to the public body explaining why the information should not be disclosed.

(4) When notice is given under subsection (1), the head of the public body must also give the applicant a notice stating that

- (a) the record requested by the applicant may contain information the disclosure of which would affect the interests or invade the personal privacy of a third party,
- (b) the third party is being given an opportunity to make representations concerning disclosure, and
- (c) a decision will be made within 30 days after the day notice is given under subsection (1).

Time limit and
notice of
decision

30(1) Within 30 days after notice is given pursuant to section 29(1) or (2), the head of the public body must decide whether or not to give access to the record or to part of the record, but no decision may be made before the earlier of

- (a) 21 days after the day notice is given, and
- (b) the day a response is received from the third party.

(2) On reaching a decision under subsection (1), the head of the public body must give written notice of the decision, including reasons for the decision, to the applicant and the third party.

(3) If the head of the public body decides to give access to the record or part of the record, the notice under subsection (2) must state that the applicant will be given access unless the third party

asks for a review under Part 4 within 20 days after that notice is given.

(4) If the head of the public body decides not to give access to the record or part of the record, the notice under subsection (2) must state that the applicant may ask for a review under Part 4 within 20 days after that notice is given.

Division 4 Public Health and Safety

Information
must be
disclosed if in
the public
interest

31(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant

(a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant, or

(b) information the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

(3) Before disclosing information under subsection (1), the head of a public body must, where practicable,

(a) notify any third party to whom the information relates,

(b) give the third party an opportunity to make representations relating to the disclosure, and

(c) notify the Commissioner.

(4) If it is not practicable to comply with subsection (3), the head of the public body must mail a notice of disclosure in the prescribed form

(a) to the last known address of the third party, and

(b) to the Commissioner.

PART 2

PROTECTION OF PRIVACY

Division 1

Collection of Personal Information

- | | |
|---|--|
| Purpose of collection of information | <p>32 No personal information may be collected by or for a public body unless</p> <ul style="list-style-type: none">(a) the collection of that information is expressly authorized by or under an Act of Alberta or Canada,(b) that information is collected for the purposes of law enforcement, or(c) that information relates directly to and is necessary for an operating program or activity of the public body. |
| Manner of collection of information | <p>33(1) A public body must collect personal information directly from the individual the information is about unless</p> <ul style="list-style-type: none">(a) another method of collection is authorized by<ul style="list-style-type: none">(i) that individual,(ii) another Act or a regulation under another Act, or(iii) the Commissioner under section 51(1)(h) of this Act,(b) the information may be disclosed to the public body under Division 2 of this Part,(c) the information is collected for the purpose of law enforcement,(d) the information is collected for the purpose of collecting a fine or a debt owed to the Government of Alberta or a public body,(e) the information concerns the history, release or supervision of an individual under the control or supervision of a correctional authority,(f) the information is collected for use in the provision of legal services to the Government of Alberta or a public body,(g) the information is necessary |

- (i) to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Government of Alberta or a public body and is collected in the course of processing an application made by or on behalf of the individual the information is about, or
 - (ii) to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the Government of Alberta or a public body and is collected for that purpose,
 - (h) the information is collected for the purpose of informing the Public Trustee or the Public Guardian about potential clients,
 - (i) the information is collected for the purpose of enforcing a maintenance order under the *Maintenance Enforcement Act*,
 - (j) the information is collected for the purpose of managing or administering personnel of the Government of Alberta or a public body, or
 - (k) the information is collected for the purpose of assisting in researching or validating the claims, disputes or grievances of aboriginal people.
- (2) A public body that collects personal information that is required by subsection (1) to be collected directly from the individual the information is about must inform the individual of
- (a) the purpose for which the information is collected,
 - (b) the specific legal authority for the collection, and
 - (c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.
- (3) Subsections (1) and (2) do not apply if, in the opinion of the head of the public body concerned, compliance with them might result in the collection of inaccurate information.

Accuracy of
personal
information

34 If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body must

- (a) make every reasonable effort to ensure that the information is accurate and complete, and

- (b) retain the personal information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it.

Right to request correction of personal information

35(1) An applicant who believes there is an error or omission in the applicant's personal information may request the head of the public body that has the information in its custody or under its control to correct the information.

(2) If no correction is made in response to a request under subsection (1), the head of the public body must annotate or link the information with the correction that was requested but not made.

(3) On correcting, annotating or linking personal information under this section, the head of the public body must notify any other public body or any third party to whom that information has been disclosed during the one year before the correction was requested that a correction, annotation or linkage has been made.

(4) On being notified under subsection (3) of a correction, annotation or linkage of personal information, a public body must make the correction, annotation or linkage on any record of that information in its custody or under its control.

(5) Within 30 days after the request under subsection (1) is received, the head of the public body must give written notice to the individual that

- (a) the correction has been made, or
- (b) an annotation or linkage has been made pursuant to subsection (2).

(6) Section 13 applies to the period set out in subsection (5).

Protection of personal information

36 The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.

Division 2 Use and Disclosure of Personal Information by Public Bodies

Use of personal information

37 A public body may use personal information only

- (a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,

- (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use, or
- (c) for a purpose for which that information may be disclosed to that public body under section 38, 40 or 41.

Disclosure of
personal
information

38 A public body may disclose personal information

- (a) in accordance with Part 1,
- (b) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,
- (c) if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure,
- (d) for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada,
- (e) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure,
- (f) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information,
- (g) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member,
- (h) for the purpose of enforcing a legal right that the Government of Alberta or a public body has against any person,
- (i) for the purpose of
 - (i) collecting a fine or debt owing by an individual to the Government of Alberta or to a public body, or
 - (ii) making a payment owing by the Government of Alberta or by a public body to an individual.
- (j) for the purpose of determining an individual's suitability or eligibility for a program or benefit,

- (k) to the Auditor General or any other prescribed person or body for audit purposes,
- (l) to a member of the Legislative Assembly who has been requested by the individual the information is about to assist in resolving a problem,
- (m) to a representative of a bargaining agent who has been authorized in writing by the employee the information is about to make an inquiry,
- (n) to the Provincial Archives of Alberta or to the archives of a public body for permanent preservation,
- (o) to a public body or a law enforcement agency in Canada to assist in an investigation
 - (i) undertaken with a view to a law enforcement proceeding, or
 - (ii) from which a law enforcement proceeding is likely to result,
- (p) if the public body is a law enforcement agency and the information is disclosed
 - (i) to another law enforcement agency in Canada, or
 - (ii) to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority,
- (q) so that the next of kin or a friend of an injured, ill or deceased individual may be contacted,
- (r) in accordance with section 40 or 41,
- (s) to an expert for the purposes of section 17(2),
- (t) for use in a proceeding before a court or quasi-judicial body to which the Government of Alberta or a public body is a party,
- (u) when disclosure is by the Minister of Justice and Attorney General or an agent or lawyer of the Minister of Justice and Attorney General to a place of lawful detention,
- (v) for the purpose of managing or administering personnel of the Government of Alberta or a public body,

- (w) to the Director of Maintenance Enforcement for the purpose of enforcing a maintenance order under the *Maintenance Enforcement Act*,
- (x) to an officer of the Legislature, if the information is necessary for the performance of the duties of that officer,
- (y) for the purpose of supervising an individual under the control or supervision of a correctional authority, or
- (z) when the information is available to the public.

Consistent
purposes

39 For the purposes of sections 37(a) and 38(b), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure

- (a) has a reasonable and direct connection to that purpose, and
- (b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.

Disclosure for
research or
statistical
purposes

40 A public body may disclose personal information for a research purpose, including statistical research, only if

- (a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form or the research purpose has been approved by the Commissioner,
- (b) any record linkage is not harmful to the individuals the information is about and the benefits to be derived from the record linkage are clearly in the public interest,
- (c) the head of the public body has approved conditions relating to the following:
 - (i) security and confidentiality,
 - (ii) the removal or destruction of individual identifiers at the earliest reasonable time, and
 - (iii) the prohibition of any subsequent use or disclosure of the information in individually identifiable form without the express authorization of that public body,

and

- (d) the person to whom the information is disclosed has signed an agreement to comply with the approved conditions, this Act and any of the public body's policies and procedures relating to the confidentiality of personal information.

Disclosure for
research
purposes

41 The Provincial Archives of Alberta and the archives of a public body may disclose personal information for research purposes if

- (a) the disclosure would not be an unreasonable invasion of personal privacy under section 16,
- (b) the disclosure is in accordance with section 40,
- (c) the information is about someone who has been dead for 25 years or more, or
- (d) the information is in a record that has been in existence for 75 years or more.

PART 3

OFFICE AND POWERS OF INFORMATION AND PRIVACY COMMISSIONER

Definition

42 In this Part, "Standing Committee" means the Standing Committee on Legislative Offices.

Appointment
of
Commissioner

43(1) The Lieutenant Governor in Council, on the recommendation of the Legislative Assembly, must appoint an Information and Privacy Commissioner to carry out the duties and functions set out in this Act.

(2) The Commissioner is an officer of the Legislature.

(3) The Commissioner may not be a member of the Legislative Assembly.

Term of office

44(1) Except as provided for in section 45, the Commissioner holds office for a term of 5 years.

(2) A person holding office as Commissioner continues to hold office after the expiry of that person's term of office until that person is reappointed, a successor is appointed or a period of 6 months has expired, whichever occurs first.

(3) A person is eligible for reappointment as Commissioner.

Resignation,
removal or
suspension of
Commissioner

45(1) The Commissioner may resign at any time by notifying the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from Alberta, by notifying the Clerk of the Legislative Assembly.

(2) The Lieutenant Governor in Council must remove the Commissioner from office or suspend the Commissioner for cause or incapacity on the recommendation of the Legislative Assembly.

(3) If the Legislative Assembly is not sitting, the Lieutenant Governor in Council may suspend the Commissioner for cause or incapacity on the recommendation of the Standing Committee.

Acting
Commissioner

46(1) The Lieutenant Governor in Council, on the recommendation of the Standing Committee, may appoint an acting Commissioner if

- (a)** the office of Commissioner is or becomes vacant when the Legislative Assembly is not sitting,
- (b)** the Commissioner is suspended when the Legislative Assembly is not sitting, or
- (c)** the Commissioner is removed or suspended or the office of the Commissioner becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Assembly under section 43(1) before the end of the session.

(2) The Lieutenant Governor in Council may appoint an acting Commissioner if the Commissioner is temporarily absent because of illness or for another reason.

(3) An acting Commissioner holds office until

- (a)** a person is appointed under section 43(1),
- (b)** the suspension of the Commissioner ends, or
- (c)** the Commissioner returns to office after a temporary absence.

Remuneration

47 The Commissioner must be remunerated as determined by the Standing Committee, and it must review that remuneration at least once a year.

Oath

48(1) Before beginning the duties of office, the Commissioner must take an oath to faithfully and impartially perform the duties of the office and not to disclose any information received by the Office of the Information and Privacy Commissioner under this Act except as provided in this Act.

(2) The oath must be administered by the Speaker of the Legislative Assembly or the Clerk of the Legislative Assembly.

Office of the
Commissioner

49(1) There may be a part of the public service of Alberta called the Office of the Information and Privacy Commissioner consisting of the Commissioner and those persons employed pursuant to the *Public Service Act* that are necessary to assist the Commissioner in carrying out the Commissioner's duties and functions under this or any other enactment.

(2) The Commissioner may engage the services of any persons necessary to assist the Commissioner in carrying out the Commissioner's duties and functions.

(3) On the recommendation of the Commissioner, the Standing Committee may order that

(a) any regulation, order or directive made under the *Financial Administration Act*, or

(b) any regulation, order, directive, rule, procedure, direction, allocation, designation or other decision under the *Public Service Act*,

does not apply to, or is varied in respect of, the Office of the Information and Privacy Commissioner or any particular employee or class of employees in the Office.

(4) An order made under subsection (3)(a) operates despite section 2 of the *Financial Administration Act*.

(5) The *Regulations Act* does not apply to orders made under subsection (3).

(6) The chair of the Standing Committee must lay a copy of each order made under subsection (3) before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the start of the next sitting.

(7) Every person employed or engaged by the Office of the Information and Privacy Commissioner must, before beginning to perform duties under this Act, take an oath, to be administered by the Commissioner, not to disclose any information received by that person under this Act except as provided in this Act.

50(1) The Commissioner must submit to the Standing Committee in respect of each fiscal year an estimate of the public money that will be required to be provided by the Legislature to defray the several charges and expenses of the Office of the Information and Privacy Commissioner in that fiscal year.

(2) The Standing Committee must review each estimate submitted pursuant to subsection (1) and, on the completion of the review, the chair of the Committee must transmit the estimate to the Provincial Treasurer for presentation to the Legislative Assembly.

(3) If at any time the Legislative Assembly is not in session the Standing Committee, or if there is no Standing Committee, the Provincial Treasurer,

(a) reports that the Auditor General has certified that in the public interest, an expenditure of public money is urgently required in respect to any matter pertaining to the Auditor General's office, and

(b) reports that either

(i) there is no supply vote under which an expenditure with respect to that matter may be made, or

(ii) there is a supply vote under which an expenditure with respect to that matter may be made but the authority available under the supply vote is insufficient,

the Lieutenant Governor in Council may order a special warrant to be prepared to be signed by himself authorizing the expenditure of the amount estimated to be required.

(4) When the Legislative Assembly is adjourned for a period of more than 14 days, then, for the purposes of subsection (3), the Assembly shall be deemed not to be in session during the period of the adjournment.

(5) When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(i), the authority to spend the amount of money specified in the special warrant for the purpose specified in the special warrant is deemed to be a supply vote for the purposes of the *Financial Administration Act* for the fiscal year in which the special warrant is signed.

(6) When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(ii), the authority to spend the amount of money specified in

the special warrant is, for the purposes of the *Financial Administration Act*, added to and deemed to be part of the supply vote to which the report relates.

(7) When a special warrant has been prepared and signed pursuant to this section, the amounts authorized by it are deemed to be included in, and not to be in addition to, the amounts authorized by the Act, not being an Act for interim supply, enacted next after it for granting to Her Majesty sums of money to defray certain expenditures of the Public Service of Alberta.

General
powers of
Commissioner

51(1) In addition to the Commissioner's powers and duties under Part 4 with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may

- (a) conduct investigations to ensure compliance with any provision of this Act,
- (b) make an order described in section 68(3) whether or not a review is requested,
- (c) inform the public about this Act,
- (d) receive comments from the public concerning the administration of this Act,
- (e) engage in or commission research into anything affecting the achievement of the purposes of this Act,
- (f) comment on the implications for freedom of information or for protection of privacy of proposed legislative schemes or programs of public bodies,
- (g) comment on the implications for protection of privacy of using or disclosing personal information for record linkage,
- (h) authorize the collection of personal information from sources other than the individual the information is about,
- (i) bring to the attention of the head of a public body any failure to meet the prescribed standards for fulfilling the duty to assist applicants, and
- (j) give advice and recommendations of general application to the head of a public body on matters respecting the rights or obligations of a head under this Act.

(2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that

- (a) a duty imposed by section 9 has not been performed,
- (b) an extension of time for responding to a request is not in accordance with section 13,
- (c) a fee required under this Act is inappropriate,
- (d) a correction of personal information requested under section 35(1) has been refused without justification, and
- (e) personal information has been collected, used or disclosed by a public body in violation of Part 2.

Advice and
recom-
mendations

52(1) The head of a public body may ask the Commissioner to give advice and recommendations on any matter respecting any rights or duties under this Act.

(2) The Commissioner may in writing provide the head with advice and recommendations that

- (a) state the material facts either expressly or by incorporating facts stated by the head,
- (b) are based on the facts referred to in clause (a), and
- (c) may be based on any other considerations the Commissioner considers appropriate.

Power to
authorize a
public body to
disregard
requests

53 If the head of a public body asks, the Commissioner may authorize the public body to disregard requests under section 7(1) that, because of their repetitious or systematic nature, would unreasonably interfere with the operations of the public body or amount to an abuse of the right to access.

Powers of
Commissioner
in conducting
investigations
or inquiries

54(1) In conducting an investigation under section 51(1)(a) or an inquiry under section 66 or in giving advice and recommendations under section 52, the Commissioner has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act* and the powers given by subsection (2) of this section.

(2) The Commissioner may require any record to be produced to the Commissioner and may examine any information in a record, including personal information whether or not the record is subject to the provisions of this Act.

(3) Despite any other enactment or any privilege of the law of evidence, a public body must produce to the Commissioner within

10 days any record or a copy of any record required under subsection (1) or (2).

(4) If a public body is required to produce a record under subsection (1) or (2) and it is not practicable to make a copy of the record, the head of that public body may require the Commissioner to examine the original at its site.

(5) After completing a review or investigating a complaint, the Commissioner must return any record or any copy of any record produced.

Statements
made to the
Commissioner
not admissible
in evidence

55(1) A statement made or an answer given by a person during an investigation or inquiry by the Commissioner is inadmissible in evidence in court or in any other proceeding, except

- (a) in a prosecution for perjury in respect of sworn testimony,
- (b) in a prosecution for an offence under this Act, or
- (c) in an application for judicial review or an appeal from a decision with respect to that application.

(2) Subsection (1) applies also in respect of evidence of the existence of proceedings conducted before the Commissioner.

Privileged
information

56 Anything said, any information supplied or any record produced by a person during an investigation or inquiry by the Commissioner is privileged in the same manner as if the investigation or inquiry were a proceeding in a court.

Restrictions on
disclosure of
information by
the
Commissioner
and staff

57(1) The Commissioner and anyone acting for or under the direction of the Commissioner must not disclose any information obtained in performing their duties, powers and functions under this Act, except as provided in subsections (2) to (5).

(2) The Commissioner may disclose, or may authorize anyone acting for or under the direction of the Commissioner to disclose, information that is necessary to

- (a) conduct an investigation or inquiry under this Act, or
- (b) establish the grounds for findings and recommendations contained in a report under this Act.

(3) In conducting an investigation or inquiry under this Act and in a report under this Act, the Commissioner and anyone acting for or

under the direction of the Commissioner must take every reasonable precaution to avoid disclosing and must not disclose

- (a) any information the head of a public body would be required or authorized to refuse to disclose if it were contained in a record requested under section 7(1), or
 - (b) whether information exists, if the head of a public body in refusing to provide access does not indicate whether the information exists.
- (4) The Commissioner may disclose to the Minister of Justice and Attorney General information relating to the commission of an offence against an enactment of Alberta or Canada if the Commissioner considers there is evidence of an offence.
- (5) The Commissioner may disclose, or may authorize anyone acting for or under the direction of the Commissioner to disclose, information in the course of a prosecution, application or appeal referred to in section 55.

Protection of
Commissioner
and staff

58 No proceedings lie against the Commissioner, or against a person acting for or under the direction of the Commissioner, for anything done, reported or said in good faith in the exercise or performance or the intended exercise or performance of a duty, power or function under this Part or Part 4.

Delegation by
Commissioner

59(1) The Commissioner may delegate to any person any duty, power or function of the Commissioner under this Act, except

- (a) the power to delegate under this section,
 - (b) the power to examine information described in section 19 or 21, and
 - (c) the duties, powers and functions specified in section 51(1)(b), 53 or 68.
- (2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the Commissioner considers appropriate.

Role of
Ombudsman

60 The Ombudsman may not investigate any matter that the Commissioner has the power to investigate or review under this Act, unless the Commissioner agrees.

Annual report
of
Commissioner

61(1) The Commissioner must report annually to the Speaker of the Legislative Assembly on

- (a) the work of the Commissioner's office,
 - (b) any complaints or reviews resulting from a decision, act or failure to act of the Commissioner as head of a public body, and
 - (c) such other matters relating to freedom of information and protection of privacy as the Commissioner considers appropriate.
- (2) The Speaker must lay each annual report before the Legislative Assembly as soon as possible.

PART 4

REVIEWS AND COMPLAINTS

Division 1

Reviews by the Commissioner

Right to ask
for a review

62(1) A person who makes a request to the head of a public body for access to a record or for correction of personal information may ask the Commissioner to review any decision, act or failure to act of the head that relates to the request.

(2) A third party notified under section 30 of a decision by the head of a public body to give access may ask the Commissioner to review that decision.

(3) A person who believes that the person's own personal information has been collected, used or disclosed in violation of Part 2 may ask the Commissioner to review that matter.

(4) This section does not apply to a decision, act or failure to act of the Commissioner, when acting as the head of the office of the Information and Privacy Commissioner.

How to ask for
a review

63(1) To ask for a review under this Division, a written request must be delivered to the Commissioner.

(2) A request for a review of a decision of the head of a public body must be delivered within

- (a) 60 days after the person asking for the review is notified of the decision, or

(b) any longer period allowed by the Commissioner.

(3) The failure of the head of a public body to respond in time to a request for access to a record is to be treated as a decision to refuse access, but the time limit in subsection (2)(a) for delivering a request for review does not apply.

Notifying
others of
review

64 On receiving a request for a review, the Commissioner must as soon as practicable

(a) give a copy of the request

(i) to the head of the public body concerned, and

(ii) to any other person who in the opinion of the Commissioner is affected by the request,

and

(b) provide a summary of the review procedures and an anticipated date for a decision on the review

(i) to the person who asked for the review,

(ii) to the head of the public body concerned, and

(iii) to any other person who in the opinion of the Commissioner is affected by the request.

Mediation may
be authorized

65 The Commissioner may authorize a mediator to investigate and try to settle any matter that is the subject of a request for a review.

Inquiry by
Commissioner

66(1) If a matter is not settled under section 65, the Commissioner must conduct an inquiry and may decide all questions of fact and law arising in the course of the inquiry.

(2) An inquiry under subsection (1) may be conducted in private.

(3) The person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review must be given an opportunity to make representations to the Commissioner during the inquiry, but no one is entitled to be present during, to have access to or to comment on representations made to the Commissioner by another person.

(4) The Commissioner may decide whether the representations are to be made orally or in writing.

(5) The person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review may be represented at the inquiry by counsel or an agent.

(6) An inquiry under this section must be completed within 90 days after receiving the request for the review unless the Commissioner

(a) notifies the person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review that the Commissioner is extending that period, and

(b) provides an anticipated date for the completion of the review.

Burden of
proof

67(1) If the inquiry relates to a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part of the record.

(2) Despite subsection (1), if the record or part of the record that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

(3) If the inquiry relates to a decision to give an applicant access to all or part of a record containing information about a third party,

(a) in the case of personal information, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy, and

(b) in any other case, it is up to the third party to prove that the applicant has no right of access to the record or part of the record.

Commission-
er's orders

68(1) On completing an inquiry under section 66, the Commissioner must dispose of the issues by making an order under this section.

(2) If the inquiry relates to a decision to give or to refuse to give access to all or part of a record, the Commissioner may, by order, do the following:

- (a) require the head to give the applicant access to all or part of the record, if the Commissioner determines that the head is not authorized or required to refuse access;
 - (b) either confirm the decision of the head or require the head to reconsider it, if the Commissioner determines that the head is authorized to refuse access;
 - (c) require the head to refuse access to all or part of the record, if the Commissioner determines that the head is required to refuse access.
- (3) If the inquiry relates to any other matter, the Commissioner may, by order, do one or more of the following:
- (a) require that a duty imposed by this Act or the regulations be performed;
 - (b) confirm or reduce the extension of a time limit under section 13;
 - (c) confirm or reduce a fee or order a refund, in the appropriate circumstances, including if a time limit is not met;
 - (d) confirm a decision not to correct personal information or specify how personal information is to be corrected;
 - (e) require a public body to stop collecting, using or disclosing personal information in violation of Part 2;
 - (f) require the head of a public body to destroy personal information collected in violation of this Act.
- (4) The Commissioner may specify any terms or conditions in an order made under this section.
- (5) The Commissioner must give a copy of an order made under this section
- (a) to the person who asked for the review,
 - (b) to the head of the public body concerned,
 - (c) to any other person given a copy of the request for the review, and
 - (d) to the Minister.
- (6) A copy of an order made by the Commissioner under this section may be filed with a clerk of the Court of Queen's Bench

and, after filing, the order is enforceable as a judgment or order of that Court.

Duty to
comply with
orders

69(1) Not later than 30 days after being given a copy of an order of the Commissioner, the head of the public body concerned must comply with the order unless an application for judicial review of the order is made before that period ends.

(2) If an application for judicial review is made before the end of the period referred to in subsection (1), the order of the Commissioner is stayed until the application is dealt with by the Court.

Division 2

Complaints About and Reviews of the Commissioner's Decisions as Head of a Public Body

Adjudicator to
investigate
complaints
and review
decisions

70(1) The Lieutenant Governor in Council may designate a judge of the Court of Queen's Bench of Alberta to act as an adjudicator

(a) to investigate complaints made against the Commissioner as the head of the office of the Information and Privacy Commissioner with respect to any matter referred to in section 51(2), and

(b) to review, if requested under section 72, any decision, act or failure to act of the Commissioner as the head of the office of the Information and Privacy Commissioner.

(2) An adjudicator may retain the services of any persons necessary to assist in performing the adjudicator's functions under this Act.

(3) The Government of Alberta may pay out of the General Revenue Fund

(a) to an adjudicator, the expenses a judge is entitled to receive under section 57(3) of the *Judges Act* (Canada) while acting as an adjudicator, and

(b) to a person whose services are retained under subsection (2), remuneration for those services.

Powers, duties
and
protections of
adjudicator

71(1) For the purposes of section 70, an adjudicator has the powers, duties and functions given to the Commissioner by sections 51(2)(a) to (d), 53, 54 and 57(1), (2)(a) and (3) to (5).

(2) Sections 55, 56, 58 and 60 apply for the purposes of an investigation, inquiry or review by an adjudicator.

Right to ask
for a review

72(1) This section applies to a decision, act or failure to act of the Commissioner, when acting as the head of the office of the Information and Privacy Commissioner.

(2) A person who makes a request to the Commissioner for access to a record or for correction of personal information may ask an adjudicator to review any decision, act or failure to act of the Commissioner that relates to the request.

(3) A third party notified under section 30 of a decision by the Commissioner to give access may ask an adjudicator to review that decision.

(4) A person who believes that the person's own personal information has been collected, used or disclosed in violation of Part 2 may ask an adjudicator to review that matter.

How to ask for
a review

73(1) To ask for a review under this Division, a written request must be delivered to the Minister.

(2) A request for a review of a decision of the Commissioner must be delivered within

- (a) 60 days after the person asking for the review is notified of the decision, or
- (b) any longer period allowed by the adjudicator.

Notifying
others of
review

74 On receiving a request for a review, the Minister must as soon as practicable

- (a) give the request to an adjudicator,
- (b) give a copy of the request
 - (i) to the Commissioner, and
 - (ii) to any other person who in the opinion of the Minister is affected by the request,

and

- (c) provide a summary of the review procedures
 - (i) to the person who asked for the review,

(ii) to the Commissioner, and

(iii) to any other person who in the opinion of the Minister is affected by the request.

Conduct and
outcome of
the review

75(1) An adjudicator has the powers and duties given to the Commissioner by sections 65 and 66(1) and (2), and sections 66(3) to (6) and 67 apply to an inquiry conducted by an adjudicator.

(2) On completing an inquiry, an adjudicator has the same duty to dispose of the issues, the same power to make orders and the same duty to notify others of those orders as the Commissioner has under section 68(1), (2), (3)(a) to (d), (4) and (5).

(3) A copy of an order made by an adjudicator under this section may be filed with a clerk of the Court of Queen's Bench and, after filing, the order is enforceable as a judgment or order of that Court.

(4) Section 69 applies to an order of an adjudicator.

Division 3 Disclosure to Commissioner

Disclosure to
Commissioner

76(1) An employee of a public body may disclose to the Commissioner any information that the employee is required to keep confidential and that the employee, acting in good faith, believes

(a) ought to be disclosed by a head under section 31, or

(b) is being collected, used or disclosed in violation of Part 2.

(2) The Commissioner must investigate and review any disclosure made under subsection (1).

(3) If an employee makes a disclosure under subsection (1), the Commissioner must not disclose the identity of the employee to any person without the employee's consent.

(4) An employee is not liable to a prosecution for an offence under any Act

(a) for copying a record or disclosing it to the Commissioner,
or

(b) for disclosing information to the Commissioner

unless the employee acted in bad faith.

(5) A public body or person acting on behalf of a public body must not take any adverse employment action against an employee because the employee, acting in good faith,

(a) has disclosed information to the Commissioner under this section, or

(b) has exercised or may exercise a right under this section.

(6) Every person who violates subsection (5) is guilty of an offence and liable to a fine of not more than \$10 000.

(7) In carrying out an investigation and review under this section, the Commissioner has all of the powers and duties set out in sections 54, 57, 65, 66 and 68(1), (2), (3)(a) to (d), (4) and (5), and sections 55, 56, 58 and 60 apply.

PART 5

GENERAL PROVISIONS

Manner of
giving notice

77 Where this Act requires any notice or other document to be given to a person, it is to be given

(a) by sending it to that person by prepaid mail to the last known address of that person,

(b) by personal service,

(c) by substitutional service if so authorized by the Commissioner, or

(d) by means of a machine or device that electronically transmits a copy of a document, picture or other printed material by means of a telecommunications system.

Exercise of
rights by other
persons

78(1) Any right or power conferred on an individual by this Act may be exercised

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

(b) if a guardian or trustee has been appointed for the individual under the *Dependent Adults Act*, by the guardian or trustee if the exercise of the right or power relates to the powers and duties of the guardian or trustee,

- (c) if a power of attorney has been granted by the individual, by the attorney if the exercise of the right or power relates to the powers and duties of the attorney conferred by the power of attorney,
- (d) if the individual is a minor, by a guardian of the minor in circumstances where, in the opinion of the head of the public body concerned, the exercise of the right or power by the guardian would not constitute an unreasonable invasion of the privacy of the minor, or
- (e) by any person with written authorization from the individual to act on the individual's behalf.

(2) Any notice required to be given to an individual under this Act may be given to the person entitled to exercise the individual's rights or powers referred to in subsection (1).

Delegation by
the head of a
public body

79(1) The head of a public body may delegate to any person any duty, power or function of the head under this Act, except the power to delegate under this section.

(2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the head of the public body considers appropriate.

Annual report
of Minister

80 The Minister must prepare an annual report about the operation of this Act and lay the report before the Legislative Assembly.

Duty to
publish
directory

81(1) The Minister must publish a directory to assist in identifying and locating records.

(2) The directory must include

- (a) a description of the mandate and functions of each public body and its components,
- (b) a description of the records in the custody or under the control of each public body,
- (c) a general listing of the records in the custody or under the control of each public body,
- (d) a subject index, and
- (e) the title, business address and business telephone number of the head of the public body.

(3) The directory must include, for each personal information bank, the following:

- (a) the title and location of the personal information bank;**
- (b) a description of the kind of personal information and the categories of individuals whose personal information is included;**
- (c) the authority for collecting the personal information;**
- (d) the purposes for which the personal information was collected or compiled and the purposes for which it is used or disclosed;**
- (e) the categories of persons who use the personal information or to whom it is disclosed.**

(4) If personal information is used or disclosed by a public body for a purpose that is not included in the directory published under subsection (1), the head of the public body must

- (a) keep a record of the purpose and either attach or link that record to the personal information,**
- (b) promptly notify the Minister of the purpose, and**
- (c) ensure that the purpose is included in the next publication of the directory.**

(5) Subsections (2)(c), (3) and (4) do not apply in respect of a local public body.

(6) The head of a local public body must make available for inspection and copying by the public a directory that lists the local public body's personal information banks and includes, for each bank, the information specified in subsection (3)(a) to (c).

(7) The Minister must

- (a) ensure that copies of the directory are made available to public bodies and to public libraries as defined in the *Libraries Act*, and**
- (b) publish and distribute, at intervals of 2 years or less, supplements or replacements to keep the directory up to date.**

(8) The head of a public body must ensure that copies of the directory are available to the public at an office of the public body.

(9) In this section, “personal information bank” means a collection of personal information that is organized or retrievable by the name of an individual or by an identifying number, symbol or other particular assigned to an individual.

Records
available
without
request

82(1) The head of a public body may specify categories of records that are in the custody or under the control of the public body and are available to the public without a request for access under this Act.

(2) The head of a public body may require a person who asks for a copy of an available record to pay a fee to the public body.

(3) Subsection (1) does not limit the discretion of the Government of Alberta or a public body to release records that do not contain personal information.

Access to
manuals

83(1) Within 2 years after this section comes into force, the head of every public body must provide facilities at

(a) the headquarters of the public body, and

(b) any offices of the public body that, in the opinion of the head, are reasonably practicable,

where the public may inspect any manual, handbook or other guideline used in decision-making processes that affect the public by employees of the public body in administering or carrying out programs or activities of the public body.

(2) Any information in a record that the head of a public body would be authorized to refuse to give access to pursuant to this Act may be excluded from the manuals, handbooks or guidelines that may be inspected pursuant to subsection (1).

Protection of
public body
from legal suit

84 No action lies and no proceeding may be brought against the Crown, a public body, the head of a public body, an elected official of a local public body or any person acting for or under the direction of the head of a public body for damages resulting from

(a) the disclosure of or failure to disclose, in good faith, all or part of a record or information under this Act or any consequences of that disclosure or failure to disclose, or

(b) the failure to give a notice required under this Act if reasonable care is taken to give the required notice.

**Offences and
penalties**

85(1) A person must not wilfully

- (a) collect, use or disclose personal information in violation of Part 2,
 - (b) make a false statement to, or mislead or attempt to mislead, the Commissioner or another person in the performance of the duties, powers or functions of the Commissioner or other person under this Act,
 - (c) obstruct the Commissioner or another person in the performance of the duties, powers or functions of the Commissioner or other person under this Act,
 - (d) fail to comply with an order made by the Commissioner under section 68 or by an adjudicator under section 75(2), or
 - (e) destroy any records subject to this Act with the intent to evade a request for access to the records.
- (2) A person who violates subsection (1) is guilty of an offence and liable to a fine of not more than \$10 000.

Fees

86(1) The head of a public body may require an applicant to pay to the public body fees for services as provided for in the regulations.

(2) Subsection (1) does not apply to a request for the applicant's own personal information, except for the cost of producing the copy.

(3) If an applicant is required to pay fees for services under subsection (1), the public body must give the applicant an estimate of the total fee before providing the services.

(4) The head of a public body, or the Commissioner at the request of an applicant, may excuse the applicant from paying all or part of a fee if, in the opinion of the head or the Commissioner, as the case may be,

- (a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or
- (b) the record relates to a matter of public interest, including the environment or public health or safety.

(5) The fees referred to in subsection (1) must not exceed the actual costs of the services.

Power to
make
regulations

87(1) The Lieutenant Governor in Council may make regulations

- (a) designating agencies, boards, commissions, corporations, offices or other bodies as public bodies;
- (b) respecting procedures to be followed in making, transferring and responding to requests under this Act;
- (c) respecting procedures to be followed in giving access where an applicant has asked to examine a record or for a copy of a record that cannot reasonably be reproduced;
- (d) respecting the making of requests under this Act orally instead of in writing;
- (e) respecting standards to be observed by officers or employees of a public body in fulfilling the duty to assist applicants;
- (f) authorizing the disclosure of information relating to the mental or physical health of individuals to medical or other experts to determine, for the purposes of section 17(2), if disclosure of that information could reasonably be expected to result in grave and immediate harm to the safety of or the mental or physical health of those individuals;
- (g) respecting procedures to be followed or restrictions considered necessary with respect to the disclosure and examination of information referred to in clause (f);
- (h) respecting special procedures for giving individuals access to personal information about their mental or physical health;
- (i) respecting the manner of giving consent for the purposes of sections 37(b) and 38(c);
- (j) prescribing persons to whom a public body may disclose personal information for audit purposes;
- (k) authorizing, for the purposes of section 22(1)(b), a local public body to hold meetings of its elected officials, or of its governing body or a committee of its governing body, to consider specified matters in the absence of the public unless another Act
 - (i) expressly authorizes the local public body to hold meetings in the absence of the public, and

- (ii) specifies the matters that may be discussed at those meetings;
 - (l) respecting fees to be paid under this Act and providing for circumstances when fees may be waived in whole or in part;
 - (m) respecting forms for the purposes of this Act;
 - (n) respecting any matter that is to be included in a notice required by this Act;
 - (o) defining, enlarging or restricting the meaning of any term used in this Act but not defined in this Act;
 - (p) requiring public bodies to provide to the Minister information that relates to the administration of this Act or is required for preparing the Minister's annual report or the directory referred to in section 81;
 - (q) exempting any public body or class of public body from the operation of a regulation made under this subsection;
 - (r) providing that other Acts or regulations, or any provisions of them, prevail despite this Act;
 - (s) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.
- (2) Any regulation under this section deleting a public body designated under subsection (1)(a) is invalid.

Power to
make by-laws

88 A local public body, by by-law or other legal instrument by which the local public body acts,

- (a) must designate a person or group of persons as the head of the local public body for the purposes of this Act,
- (b) may authorize any person to perform any duty or exercise any function under this Act of the person or group of persons designated as the head of the local public body, and
- (c) may set any fees the local public body requires to be paid under section 86.

Application of this Act **89** This Act applies to any record in the custody or under the control of a public body regardless of whether it comes into existence before or after this Act comes into force.

Review of Act **90** A special committee of the Legislative Assembly must begin a comprehensive review of this Act within 3 years after section 6 comes into force and must submit to the Legislative Assembly, within one year after beginning the review, a report that includes any amendments recommended by the committee.

PART 6

TRANSITIONAL, CONSEQUENTIAL AND COMMENCEMENT

Appointment of first Information and Privacy Commissioner **91** *For the purposes of appointing the first Information and Privacy Commissioner, if the Legislative Assembly is not sitting, the Lieutenant Governor in Council on the recommendation of the Standing Committee on Legislative Offices may appoint an Information and Privacy Commissioner, and unless the office sooner becomes vacant, the person so appointed holds office until the appointment is confirmed by the Legislative Assembly.*

Amends RSA 1980 cA-49 **92** *The Auditor General Act is amended in section 1(c) by striking out “and” at the end of subclause (iii), by adding “and” at the end of subclause (iv) and by adding the following after subclause (iv):*

(v) the Information and Privacy Commissioner and the staff of the Office of the Information and Privacy Commissioner;

Amends SA 1991 cC-22.1 **93** *The Conflicts of Interest Act is amended in Part 2 of the Schedule by adding the following:*

5. The Information and Privacy Commissioner

Amends SA 1983 cD-25.5 **94** *The Department of Public Works, Supply and Services Act is amended by repealing section 21(2)(c).*

Amends RSA 1980 cF-9 **95** *The Financial Administration Act is amended*
(a) in section 1(1)(c) by striking out “and” at the end of subclause (vii), by adding “and” at the end of subclause (viii) and by adding the following after subclause (viii):

- (ix) the Office of the Information and Privacy Commissioner;
- (b) in section 2(1) by adding “, the Freedom of Information and Protection of Privacy Act” after “Alberta Bill of Rights”;
- (c) in section 33(1)
 - (i) in clause (b) by striking out “and” at the end of subclause (iv), by adding “and” at the end of subclause (v) and by adding the following after subclause (v):
 - (vi) the Office of the Information and Privacy Commissioner;
 - (ii) in clause (c) by striking out “and” at the end of subclause (iv), by adding “and” at the end of subclause (v) and by adding the following after subclause (v):
 - (vi) the Information and Privacy Commissioner with respect to the Office of the Information and Privacy Commissioner;
 - (iii) in clause (d) by striking out “and” at the end of subclause (iv), by adding “and” at the end of subclause (v) and by adding the following after subclause (v):
 - (vi) the Information and Privacy Commissioner with respect to the Office of the Information and Privacy Commissioner;

Amends RSA
1980 cP-31

96 *The Public Service Act is amended in section 1*

- (a) in clause (c) by adding the following after subclause (iv.1):
 - (iv.2) the Information and Privacy Commissioner with respect to the Office of the Information and Privacy Commissioner,
- (b) in clause (d) by adding the following after subclause (iv.1):
 - (iv.2) the Information and Privacy Commissioner with respect to the Office of the Information and Privacy Commissioner,

Coming into
force

97 *This Act comes into force on Proclamation.*