

1995 BILL 19

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Third Session, 23rd Legislature, 44 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 19**

**FREEDOM OF INFORMATION AND PROTECTION OF  
PRIVACY AMENDMENT ACT, 1995**

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THE MINISTER OF PUBLIC WORKS,  
SUPPLY AND SERVICES

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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## BILL 19

1995

### FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY AMENDMENT ACT, 1995

(Assented to , 1995)

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

Amends SA  
1994 cF-18.5

*1 The Freedom of Information and Protection of Privacy Act is  
amended by this Act.*

*2(1) Section 1(1) is amended*

*(a) in clause (f)(ii) by striking out “88(a)” and substituting  
“89(a)”;*

*(b) by repealing clause (g) and substituting the following:*

*(g) “health care body” means*

*(i) an approved hospital as defined in the Hospitals  
Act,*

*(ii) a nursing home as defined in the Nursing  
Homes Act,*

*(iii) a provincial health board established under the  
Regional Health Authorities Act,*

*(iv) a regional health authority under the Regional  
Health Authorities Act,*

*(v) a community health council established under  
the Regional Health Authorities Act, or*

*(vi) a subsidiary health corporation as defined in the  
Regional Health Authorities Act;*

*(c) in clause (i)*

## Explanatory Notes

**1** Amends chapter F-18.5 of the Statutes of Alberta, 1994.

**2** Section 1 presently reads in part:

*1(1) In this Act,*

*(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;*

- (i) *by repealing subclause (ii);*
    - (ii) *by repealing subclause (iii) and substituting the following:*
      - (iii) *an improvement district under the Municipal Government Act,*
    - (iii) *by repealing subclauses (iv), (v) and (vii);*
    - (iv) *by repealing subclauses (xii) and (xiii) and substituting the following:*
      - (xii) *a management body established under the Alberta Housing Act, a housing authority continued under section 37 of the Alberta Housing Act and a foundation continued as a management body under section 38 of the Alberta Housing Act,*
  - (d) *by adding the following after clause (p)(iii):*
    - (iii.1) *the office of a member of the Executive Council,*
  - (e) *by repealing clause (p)(vii) and substituting the following:*
    - (vii) *the office of the Speaker of the Legislative Assembly and the office of a Member of the Legislative Assembly, or*
  - (f) *by striking out “or” at the end of clause (p)(viii) and repealing clause (p)(ix).*
- (2) *Section 1(2) is repealed.*

- (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 board established under the Drainage Districts Act,*
  - (xi) *a board established under the Irrigation Act,*
  - (xii) *a housing authority incorporated under the Alberta Mortgage and Housing Corporation Act,*
  - (xiii) *a foundation constituted under the Senior Citizens Housing Act,*
  - (xiv) *a Metis settlement established under the Metis Settlements Act,*
  - (xv) *the Metis Settlements General Council established under the Metis Settlements Act, or*
  - (xvi) *any board, committee, commission, panel, agency or corporation that is created or owned by a body referred to in subclauses (i) to (xv) and all the members or officers of which are appointed or chosen by, or under the authority of, that body;*
- (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,*

*3 Section 2(a) is amended by striking out “custody and” and substituting “custody or”.*

*4 Section 3(b)(i) and (ii) are repealed and the following is substituted:*

- (i) deposited in the Provincial Archives of Alberta, or*
- (ii) deposited in the archives of a public body*

- (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 the Speaker of the Legislative Assembly, the office of a member of the Executive Council with respect to personal records and constituency records and the office of a member of the Legislative Assembly,*
- (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;*

*(2) For the purposes of subsection (1)(p)(ix), a non-arm's length transaction is any transaction that has been approved*

- (a) by the Executive Council or any of its committees,*
- (b) by the Treasury Board or any of its committees, or*
- (c) by a member of the Executive Council.*

**3** Section 2(a) presently reads:

**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,*

**4** Section 3 presently reads in part:

**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,*

5 *Section 4 is amended*

*(a) in subsection (1)*

*(i) by adding the following after clause (c):*

(c.1) a record that is created by or is in the custody or under the control of the Ethics Commissioner and relates

(i) to the disclosure statements of deputy ministers and other senior officers that have been deposited with the Ethics Commissioner, or

(ii) to any advice relating to conflicts of interest whether or not the advice was given under the *Conflicts of Interest Act*;

*(ii) in clause (f) by striking out “placed” and substituting “deposited”;*

*(iii) in clause (h) by repealing subclause (ii) and substituting the following:*

(ii) in the office of the Registrar of Motor Vehicle Services,

(ii.1) in the office of the Registrar of Corporations,

(ii.2) in the office of the Registrar of Companies,

*(iv) by adding the following after clause (i):*

(j) a personal record or constituency record of a member of the Executive Council;

(k) a record created by or for the office of the Speaker of the Legislative Assembly or the office of a Member of the Legislative Assembly that is in the custody or control of the Legislative Assembly Office;

(l) a record created by or for

(i) a member of the Executive Council,

(ii) a Member of the Legislative Assembly, or



**5** Section 4 presently reads:

*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;*

- (iii) a chair of a Provincial agency as defined in the *Financial Administration Act* who is a Member of the Legislative Assembly

that has been sent or is to be sent to a member of the Executive Council, a Member of the Legislative Assembly or a chair of a Provincial agency as defined in the *Financial Administration Act* who is a Member of the Legislative Assembly;

- (m) a record in the custody or control of a treasury branch other than a record that relates to a non-arm's length transaction between the Government of Alberta and another party;
- (n) a record of a credit union in the custody or control of the Credit Union Deposit Guarantee Corporation other than a record that relates to a non-arm's length transaction between the Government of Alberta and another party.

(b) by adding the following after subsection (2):

(3) For the purposes of subsection (1)(m) and (n), a non-arm's length transaction is any transaction that has been approved

- (a) by the Executive Council or any of its committees,
- (b) by the Treasury Board or any of its committees, or
- (c) by a member of the Executive Council.

(4) For the purposes of subsection (1)(n), "record of a credit union" means a record that originates from a credit union that is submitted to, or received by, the Credit Union Deposit Guarantee Corporation.

6 Section 12 is amended by adding the following after subsection (2):

(2.1) If there will be a delay in providing the copy under subsection (2), the applicant must be told where, when and how the copy will be provided.

- (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.*

**6** Section 12(2) presently reads:

*(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.*

*7 Section 14(2)(b) is amended by striking out “15” and substituting “30”.*

*8 Section 19(5) is amended by striking out “must not refuse to” and substituting “may”.*

*9 Section 20(1)(b) and (3) are amended by striking out “local public body” and substituting “local government body”.*

**7** Section 14 presently reads:

*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.*

**8** Section 19(5) presently reads:

*(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.*

**9** Section 20(1) and (3) presently read:

*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 government body,*
  - (iii) the government of a foreign state, or*

*10 Section 26 is amended*

- (a) in subsection (1)(a) by adding “or parliamentary privilege” after “solicitor-client privilege”;*
- (b) by adding the following after subsection (2):*
  - (3) Only the Speaker of the Legislative Assembly may determine whether information is subject to parliamentary privilege.**

*11 Section 27(a) is repealed and the following is substituted:*

- (a) any historic resource as defined in the *Historical Resources Act*, or*

*12 Section 38 is amended*

- (a) by renumbering it as section 38(1);*
- (b) in subsection (1)(i)(i) by adding “, or to an assignee of either of them” after “public body”;*
- (c) by striking out “or” at the end of subsection (1)(y), adding “or” at the end of subsection (1)(z) and adding the following after subsection (1)(z):*

*(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.*

*(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.*

**10** Section 26 presently reads:

*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.*

**11** Section 27(a) presently reads:

*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*

**12** Section 38 presently reads in part:

*38 A public body may disclose personal information only*

*(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*

(aa) to a relative of a deceased individual if, in the opinion of the head of the public body, the disclosure is not an unreasonable invasion of the deceased's personal privacy.

(d) *by adding the following after subsection (1):*

(2) Only information that is reasonably required may be disclosed under subsection (1)(i).

13 *Section 62 is amended*

(a) *by adding the following after subsection (3):*

(3.1) A relative of a deceased individual may ask the Commissioner to review a decision of a head of a public body under section 38(aa) not to disclose personal information.

(b) *by repealing subsection (4) and substituting the following:*

(4) This section does not apply

(a) 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,

(b) to a decision by the Speaker of the Legislative Assembly that a record is subject to parliamentary privilege, or

(c) if the person who is appointed as the Commissioner is, at the same time, appointed as any other officer of the Legislature, to a decision, act or failure to act of that person when acting as the head of that office.

14 *Section 71(1) is amended*

(a) *by striking out "and" at the end of clause (a) and adding the following after clause (a):*

(a.1) if the person who is appointed as the Commissioner is, at the same time, appointed as any other officer of the Legislature, to investigate complaints respecting any matter referred to in section 51(2) made against that person when acting as the head of that office,



- (ii) making a payment owing by the Government of Alberta or by a public body to an individual,*
- (z) when the information is available to the public.*

**13** Section 62(4) presently reads:

*(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.*

**14** Section 71(1) presently reads:

*71(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) *by adding “and” at the end of clause (b) and adding the following after clause (b):*

(c) *if the person who is appointed as the Commissioner is, at the same time, appointed as any other officer of the Legislature, to review, if requested under section 73, any decision, act or failure to act of that person when acting as the head of that office.*

15 *Section 73(1) is repealed and the following is substituted:*

Right to ask  
for a review

**73(1)** This section applies

(a) *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, and*

(b) *if the person who is appointed as the Commissioner is, at the same time, appointed as any other officer of the Legislature, to a decision, act or failure to act of that person when acting as the head of that office.*

16 *In the following provisions, “privacy” is struck out and “personal privacy” is substituted:*

51(1)(f) and (g);  
61(1)(c);  
79(1)(d).

17 *Section 92 is renumbered as section 92(1) and the following is added after subsection (1):*

(2) *Notwithstanding section 44, if the first Information and Privacy Commissioner is the Ethics Commissioner, the term of office of the Information and Privacy Commissioner expires when the appointment of the Ethics Commissioner expires or the office sooner becomes vacant.*

18 *Section 96 is amended*

(a) *by adding the following after clause (a):*

(a.1) *in section 1(1)(q) by adding the following after subclause (iv):*

(iv.1) *the Office of the Information and Privacy Commissioner,*

*(b) to review, if requested under section 73, any decision, act or failure to act of the Commissioner as the head of the office of the Information and Privacy Commissioner.*

**15** Section 73(1) presently reads:

*73(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.*

**16** Consequential changes.

**17** Expiry, if Commissioner is Ethics Commissioner.

**18** Sections 1(1)(q) and 76.1(10)(a)(ii) of the Financial Administration Act presently read:

*1(1) In this Act,*

*(q) “public official” means*

*(i) a member of the Executive Council,*

*(b) by adding the following after clause (c):*

*(d) in section 76.1(10)(a)(ii) by adding “, the Office of the Information and Privacy Commissioner” after “General”.*

*19(1) The Conflicts of Interest Act is amended by this section.*

*(2) Section 31(2) is repealed and the following is substituted:*

**(2)** The Ethics Commissioner may not be a Member of the Legislative Assembly.

*(3) Section 34 is amended by striking out “disability, neglect of duty, misconduct or bankruptcy” wherever it occurs and substituting “cause or incapacity”.*

- (ii) *a person who holds an office at the appointment of the Lieutenant Governor in Council or a member of the Executive Council and who receives remuneration from the Crown in respect of that office,*
- (iii) *the Speaker of the Legislative Assembly,*
- (iv) *the Auditor General,*
- (v) *the Ombudsman, or*
- (vi) *the Chief Electoral Officer;*

**76.1(10)** *For the purposes of this section participants include the following:*

- (a) *unless the Treasury Board prescribes otherwise,*
- (ii) *the Legislative Assembly Office, the Office of the Auditor General, the Office of the Ombudsman and the Office of the Chief Electoral Officer;*

**19(1)** Amends chapter C-22.1 of the Statutes of Alberta, 1991.

(2) Section 31(2) presently reads:

(2) *The Ethics Commissioner*

- (a) *may not be a Member of the Legislative Assembly, and*
- (b) *may not hold any office or engage in any occupation or business that might cause a conflict with the Ethics Commissioner's duties.*

(3) Section 34 presently reads:

**34(1)** *On the recommendation of the Legislative Assembly, the Lieutenant Governor in Council may, at any time, suspend or remove the Ethics Commissioner from office for disability, neglect of duty, misconduct or bankruptcy.*

(2) *At any time the Legislative Assembly is not sitting the Lieutenant Governor in Council, on the recommendation of the Standing Committee, may suspend the Ethics Commissioner from office for disability, neglect of duty, misconduct or bankruptcy, but the suspension shall not continue in force beyond the end of the next sitting of the Legislative Assembly.*