

Bill 20
Mrs. Jablonski

BILL 20

2006

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY AMENDMENT ACT, 2006

(Assented to , 2006)

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

Amends RSA 2000 cF-25

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

2 Section 3(d) is amended by adding “in Canada” after “tribunal”.

3 Section 4(1) is amended by adding the following after clause (j):

(j.1) published works collected by a library of a public body in accordance with the library’s acquisition of materials policy;

4 Section 6 is amended by adding the following after subsection (3):

(4) The right of access does not extend

(a) to a record created solely for the purpose of briefing a member of the Executive Council in respect of assuming responsibility for a ministry, or

(b) to a record created solely for the purpose of briefing a member of the Executive Council in preparation for a sitting of the Legislative Assembly.

(5) Subsection (4)(a) does not apply to a record described in that clause if 5 years or more has elapsed since the member of the Executive Council was appointed as the member responsible for the ministry.

(6) Subsection (4)(b) does not apply to a record described in that clause if 5 years or more has elapsed since the beginning of the sitting in respect of which the record was created.

(7) The right of access to a record does not extend to a record relating to an audit by the Chief Internal Auditor of Alberta that is in the custody of the Chief Internal Auditor of Alberta or any person under the administration of the Chief Internal Auditor of Alberta, irrespective of whether the record was created by or for or supplied to the Chief Internal Auditor of Alberta.

(8) Subsection (7) does not apply to a record described in that subsection

(a) if 15 years or more has elapsed since the audit to which the record relates was completed, or

(b) if the audit to which the record relates was discontinued or if no progress has been made on the audit for 15 years or more.

5 Section 24 is amended by adding the following after subsection (2):

(2.1) The head of a public body must refuse to disclose to an applicant

(a) a record relating to an audit by the Chief Internal Auditor of Alberta that is created by or for the Chief Internal Auditor of Alberta, or

(b) information that would reveal information about an audit by the Chief Internal Auditor of Alberta.

(2.2) Subsection (2.1) does not apply to a record or information described in that subsection

- (a) if 15 years or more has elapsed since the audit to which the record or information relates was completed, or
- (b) if the audit to which the record or information relates was discontinued or if no progress has been made on the audit for 15 years or more.

6 Section 40(1)(g) is repealed and the following is substituted:

- (g) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction in Alberta to compel the production of information or with a rule of court binding in Alberta that relates to the production of information,

7 Section 55 is amended by renumbering it as section 55(1) and by adding the following after subsection (1):

- (2) The processing of a request under section 7(1) or 36(1) ceases when the head of a public body has made a request under subsection (1) and
 - (a) if the Commissioner authorizes the head of the public body to disregard the request, does not resume;
 - (b) if the Commissioner does not authorize the head of the public body to disregard the request, does not resume until the Commissioner advises the head of the public body of the Commissioner's decision.

8 Section 92 is amended by adding the following after subsection (2):

- (3) A person must not wilfully disclose personal information to which this Act applies pursuant to a subpoena, warrant or order issued or made by a court, person or body having no jurisdiction in Alberta to compel the production of information or pursuant to a rule of court that is not binding in Alberta.
- (4) A person who contravenes subsection (3) is guilty of an offence and liable

- (a) in the case of an individual, to a fine of not less than \$2000 and not more than \$10 000, and
- (b) in the case of any other person, to a fine of not less than \$200 000 and not more than \$500 000.

(5) A prosecution under this Act may be commenced within 2 years after the commission of the alleged offence, but not afterwards.

9 Section 94 is amended

(a) by repealing subsection (2) and substituting the following:

(2) The Lieutenant Governor in Council or the Minister may delete a body designated under subsection (1)(a) or (3), respectively, but only if the Commissioner is satisfied that it is not contrary to the public interest to delete the body and that

- (a) the body
 - (i) has been discontinued or no longer exists,
 - (ii) has been amalgamated with another body, and use of the name under which it was designated has been discontinued,
 - (iii) is a public body described in section 1(p)(i), (iii), (iv), (v), (vi) or (vii), or
 - (iv) would more appropriately be subject to another Act of Alberta or Canada that provides for access to information or protection of privacy or both,

or

- (b) all of the following apply:
 - (i) the Government of Alberta does not appoint a majority of members to the body or to the governing board of the body;

- (ii) the Government of Alberta does not provide the majority of the body's continuing funding;
- (iii) the Government of Alberta does not hold a controlling interest in the share capital of the body.

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

(3) The Minister may by regulation designate an agency, board, commission, corporation, office or other body as a public body on the same criteria established by regulation on which the Lieutenant Governor in Council may designate a public body, but only at the request of the Minister responsible for that agency, board, commission, corporation, office or other body.

(4) A regulation made under subsection (3) is repealed on the coming into force of a regulation made under subsection (1)(a) that designates the agency, board, commission, corporation, office or other body as a public body.

Explanatory Notes

1 Amends chapter F-25 of the Revised Statutes of Alberta 2000.

2 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) deposited in the Provincial Archives of Alberta, or

(ii) deposited in 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*

3 Library materials excluded from application of Act.

4 Section 6 presently reads:

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.

5 Section 24 presently reads:

24(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*
 - (i) *of the governing body of an agency, board, commission, corporation, office or other body that is designated as a public body in the regulations, or*
 - (ii) *of a committee of a governing body referred to in subclause (i),*
 - (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, or*
 - (h) *the contents of a formal research or audit report that in the opinion of the head of the public body is incomplete unless no progress has been made on the report for at least 3 years.*
- (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, that is complete or on which no progress has been made for at least 3 years, 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, that is complete or on which no progress has been made for at least 3 years,*

(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.*

(3) *In this section, “audit” means a financial or other formal and systematic examination or review of a program, portion of a program or activity.*

6 Section 40(1)(g) presently reads:

40(1) A public body may disclose personal information only

(g) 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,

7 Section 55 presently reads:

55 If the head of a public body asks, the Commissioner may authorize the public body to disregard one or more requests under section 7(1) or 36(1) if

- (a) *because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the public body or amount to an abuse of the right to make those requests, or*
- (b) *one or more of the requests are frivolous or vexatious.*

8 Section 92 presently reads:

92(1) A person must not wilfully

- (a) *collect, use or disclose personal information in contravention of Part 2,*
- (b) *attempt to gain or gain access to personal information in contravention of this Act,*
- (c) *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,*
- (d) *obstruct the Commissioner or another person in the performance of the duties, powers or functions of the Commissioner or other person under this Act,*
- (e) *alter, falsify or conceal any record, or direct another person to do so, with the intent to evade a request for access to the record,*
- (f) *fail to comply with an order made by the Commissioner under section 72 or by an adjudicator under section 81(2), or*
- (g) *destroy any records subject to this Act, or direct another person to do so, with the intent to evade a request for access to the records.*

(2) A person who contravenes subsection (1) is guilty of an offence and liable to a fine of not more than \$10 000.

9 Section 94 presently reads in part:

(2) The Lieutenant Governor in Council may delete a body designated under subsection (1)(a) only if the Commissioner is satisfied that it is not contrary to the public interest to delete the body and that

(a) the body

- (i) has been discontinued or no longer exists, or*
- (ii) has been amalgamated with another body and use of the name under which it was designated has been discontinued,*

or

(b) all of the following apply:

- (i) the Government of Alberta does not appoint a majority of members to the body or to the governing board of the body;*
- (ii) the Government of Alberta does not provide the majority of the body's continuing funding;*
- (iii) the Government of Alberta does not hold a controlling interest in the share capital of the body.*