

2024 Bill 34

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First Session, 31st Legislature, 3 Charles III

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 34**

## **ACCESS TO INFORMATION ACT**

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THE MINISTER OF SERVICE ALBERTA AND RED TAPE REDUCTION

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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# BILL 34

2024

## ACCESS TO INFORMATION ACT

(Assented to , 2024)

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

**Definitions**

**1** In this Act,

- (a) “applicant” means a person who makes a request for access to a record under section 7(1);
- (b) “biometric information” means information derived from an individual’s unique measurable characteristics;
- (c) “business day” means a day other than
  - (i) a Saturday,
  - (ii) a holiday, or
  - (iii) a day when Government of Alberta offices are closed as part of the Government of Alberta’s Christmas closure;
- (d) “Commissioner” means the Information and Privacy Commissioner appointed under Part 2;
- (e) “educational body” means
  - (i) a university as defined in the *Post-secondary Learning Act*,
  - (ii) a polytechnic institution as defined in the *Post-secondary Learning Act*,

- (iii) a comprehensive community college as defined in the *Post-secondary Learning Act*,
  - (iv) the Banff Centre as defined in the *Post-secondary Learning Act*,
  - (v) a board as defined in the *Education Act*,
  - (vi) a charter school as defined in the *Education Act*, or
  - (vii) a Francophone regional authority as defined in the *Education Act*;
- (f) “electronic record” means a record that exists at the time a request for access is made or that is routinely generated by a public body that can be any combination of texts, graphics, data, audio, pictorial or other information represented in a digital form that is created, maintained, archived, retrieved or distributed by a computer system;
- (g) “employee”, in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body;
- (h) “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 an agency, board, commission, corporation, office or other body designated as a public body in the regulations, the person designated by the member of the Executive Council responsible for that body to act as the head of that body or, if a head is not so designated, the person who acts as the chief officer and is charged with the administration and operation of that body,
  - (iii) if the public body is a local public body, the person or group of persons designated under section 98(a) as the head of the public body, and
  - (iv) in any other case, the chief officer of the public body;
- (i) “health care body” means



- (i) the board of an approved hospital as defined in the *Hospitals Act* other than an approved hospital that is owned or operated by a provincial health agency or regional health authority under the *Provincial Health Agencies Act*,
- (ii) the Health Quality Council of Alberta,
- (iii) a provincial health agency under the *Provincial Health Agencies Act*,
- (iv) a provincial health board established under the *Provincial Health Agencies Act*,
- (v) a regional health authority under the *Provincial Health Agencies Act*,
- (vi) a community health council established under the *Provincial Health Agencies Act*,
- (vii) a subsidiary health corporation as defined in the *Provincial Health Agencies Act*, or
- (viii) the Canadian Centre of Recovery Excellence;
- (j) “independent adjudicator” means a person designated under section 77;
- (k) “information” means content contained in a record;
- (l) “law enforcement” means
  - (i) policing, including criminal intelligence operations,
  - (ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or
  - (iii) proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred;

- (m) “local government body” means
- (i) a municipality as defined in the *Municipal Government Act*,
  - (ii) an improvement district under the *Municipal Government Act*,
  - (iii) a special area as defined in the *Special Areas Act*,
  - (iv) a regional services commission as defined in the *Municipal Government Act*,
  - (v) a growth management board as defined in the *Municipal Government Act*,
  - (vi) a board established under the *Drainage Districts Act*,
  - (vii) a board established under the *Irrigation Districts Act*,
  - (viii) a management body as defined in the *Alberta Housing Act*,
  - (ix) a Metis settlement,
  - (x) the Metis Settlements General Council established under the *Metis Settlements Act*,
  - (xi) any
    - (A) commission,
    - (B) police service, or
    - (C) policing committee,as defined in the *Police Act*,
  - (xii) any municipal library board, library system board or intermunicipal library board continued or established under the *Libraries Act*, or
  - (xiii) any board, committee, commission, panel, agency or corporation that is created or owned by a body referred to in subclauses (i) to (xii) and all the members or officers of which are appointed or chosen by that body, but does not include EPCOR

Utilities Inc. or ENMAX Corporation or any of their respective subsidiaries

- (A) that own a gas utility as defined in the *Gas Utilities Act*,
  - (B) that own a generating unit, transmission facility or electric distribution system as defined in the *Electric Utilities Act*, or
  - (C) whose primary business activity consists of providing electricity services as defined in the *Electric Utilities Act*;
- (n) “local public body” means
- (i) an educational body,
  - (ii) a health care body, or
  - (iii) a local government body;
- (o) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (p) “offence” means an offence under an enactment of Alberta or Canada;
- (q) “officer of the Legislature” means the Auditor General, the Ombudsman, the Chief Electoral Officer, the Ethics Commissioner, the Information and Privacy Commissioner, the Child and Youth Advocate or the Public Interest Commissioner;
- (r) “personal information” means recorded information about an identifiable individual, including
- (i) the individual’s name, home or business address, home or business telephone number, home or business email address or other contact information, except where the individual has provided the information on behalf of the individual’s employer or principal, in the individual’s capacity as an employee or agent,

- (ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,
  - (iii) the individual's age, gender identity, sex, sexual orientation, marital status or family status,
  - (iv) an identifying number, symbol or other particular assigned to the individual,
  - (v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,
  - (vi) information about the individual's health and health care history, including information about the individual's physical or mental health,
  - (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;
- (s) "prescribed" means prescribed by the regulations;
- (t) "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 office of a member of the Executive Council,
  - (v) the Legislative Assembly Office,
  - (vi) the office of the Auditor General, the Ombudsman, the Chief Electoral Officer, the Ethics Commissioner, the Information and Privacy

Commissioner, the Child and Youth Advocate or the Public Interest Commissioner, or

(vii) a local public body,

but does not include

(viii) the office of the Speaker of the Legislative Assembly and the office of a Member of the Legislative Assembly, or

(ix) the Court of Appeal, the Court of King's Bench or the Court of Justice;

(u) "record" means any electronic record or other record in any form in which information is contained or stored, including information in any written, graphic, electronic, digital, photographic, audio or other medium, but does not include any software or other mechanism used to store or produce the record;

(v) "third party" means a person, a group of persons or an organization other than an applicant or a public body;

(w) "trade secret" means information, a formula, a pattern, a compilation, a program, a device, a product, a method, a technique or a 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 or under the control of a public body subject to limited and specific exceptions as set out in this Act,
- (b) 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, and
- (c) 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 deposited in
  - (i) the Provincial Archives of Alberta, or
  - (ii) the archives of a public bodythat 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 in Canada to compel a witness to testify or to compel the production of documents, and
- (e) does not prohibit the transfer, storage or destruction of a record in accordance with
  - (i) an enactment of Alberta or Canada, or
  - (ii) a bylaw, resolution or other legal instrument by which a local public body acts or, if a local public body does not have a bylaw, resolution or other legal instrument in respect of the transfer, storage or destruction of a record, as authorized by the governing body of the local public 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, but does not apply to the following:

- (a) information in a court file, court database or any other record system used by a court, a record of a judge of the Court of Appeal, the Court of King's Bench or the Court of Justice, a record of an applications judge of the Court of King's Bench, a record of a justice of the peace other than a non-presiding justice of the peace under the *Justice of the Peace Act*, 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 created by or on behalf of a person acting in a judicial or quasi-judicial capacity, including any authority designated by the Lieutenant Governor in Council to which the *Administrative Procedures and Jurisdiction Act* applies;
- (c) a quality assurance record as defined in section 9 of the *Alberta Evidence Act*;
- (d) a record that is created by or on behalf of 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;
- (e) information that is collected by or on behalf of or is in the custody or under the control of the Ethics Commissioner and relates to the disclosure statements of deputy ministers and other senior officers that have been filed with the Ethics Commissioner;
- (f) information that is collected by or on behalf of or is in the custody or under the control of the Ethics Commissioner and relates to the disclosure statements of designated senior officials that have been filed with the Ethics Commissioner under Part 4.3 of the *Conflicts of Interest Act*;
- (g) a record that is created by or on behalf of or is in the custody or under the control of the Ethics Commissioner and relates to any advice relating to conflicts of interest whether or not the advice was given under the *Conflicts of Interest Act*;

- (h) a question to be used on an examination or test;
- (i) teaching materials of
  - (i) an employee of a post-secondary educational body,
  - (ii) a post-secondary educational body, or
  - (iii) both an employee of a post-secondary educational body and the post-secondary educational body;
- (j) research information of an employee of a post-secondary educational body;
- (k) material that has been deposited in the Provincial Archives of Alberta or the archives of a public body by or on behalf of a person or entity other than a public body;
- (l) published works collected by a library of a public body in accordance with the library's acquisition of materials policy;
- (m) a record relating to a prosecution or potential prosecution, including any charging recommendation, if all proceedings in respect of the prosecution have not been completed;
- (n) a record, including any charging recommendation, created by or on behalf of or that is in the custody or under the control of a prosecutor relating to a prosecution or potential prosecution;
- (o) a record in the custody or under the control of, or a record made from information in,
  - (i) the Personal Property Registry,
  - (ii) the office of the Registrar of Motor Vehicle Services,
  - (iii) the office of the Registrar of Corporations,
  - (iv) the office of the Registrar of Companies,
  - (v) a Land Titles Office,
  - (vi) the office of the Registrar of Vital Statistics, or



- (vii) a registry operated by a public body if that registry is authorized or recognized by an enactment and public access to the registry is normally permitted;
- (p) a personal record or constituency record of an elected member of a local public body;
- (q) a personal record of an appointed or elected member of the governing body of a local public body;
- (r) a personal record or constituency record of a member of the Executive Council;
- (s) a record created by or on behalf of 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 under the control of the Legislative Assembly Office;
- (t) a record created by or on behalf of
  - (i) a member of the Executive Council,
  - (ii) a Member of the Legislative Assembly, or
  - (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;
- (u) a record created solely for the purpose of briefing a member of the Executive Council in respect of assuming responsibility for a ministry;
- (v) a record created solely for the purpose of briefing a member of the Executive Council in preparation for a sitting of the Legislative Assembly;
- (w) a record of communication between
  - (i) political staff, or
  - (ii) a member of Executive Council and political staff

that does not involve any other employee of a public body;

- (x) a record in the custody or under the control of ATB Financial other than a record that relates to a non-arm's length transaction between the Government of Alberta and another party;
- (y) a record relating to the business or affairs of Credit Union Central Alberta Limited, a credit union or a dissolved credit union or relating to an application for incorporation as a credit union that is obtained or produced in the course of administering or enforcing the *Credit Union Act* or the regulations under it, other than a record that relates to a non-arm's length transaction between the Government and another party;
- (z) a record of the information referred to in section 120(3) of the *Credit Union Act* or respecting loans made by a credit union that are subsequently assumed by the Credit Union Deposit Guarantee Corporation;
- (aa) health information as defined in the *Health Information Act* that is in the custody or under the control of a public body that is a custodian as defined in the *Health Information Act*;
- (bb) 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;
- (cc) a record that is available to the public under section 90;
- (dd) a record in the custody or under the control of
  - (i) the Government of Canada or its agencies, or
  - (ii) the government of a province or territory of Canada or its agencies, other than the Government of Alberta or its agencies.

**(2)** Despite subsection (1)(u), this Act applies to a record described in that clause if 5 years or more has elapsed since the member of

the Executive Council was appointed as a member responsible for the ministry.

**(3)** Despite subsection (1)(v), this Act applies 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.

**(4)** Despite subsection (1)(bb), this Act applies to a record described in that clause

- (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)** In this section and sections 28(1)(b) and 97(1)(j), “governing body” means,

- (a) in relation to a university, the board of governors or the general faculties council as described in the *Post-secondary Learning Act*, and
- (b) in relation to a comprehensive community college or polytechnic institution, the board of governors or the academic council as described in the *Post-secondary Learning Act*.

**(6)** In this section, “judicial administration record” means a record containing information relating to a judge of the Court of Appeal, the Court of King’s Bench or the Court of Justice, to an applications judge of the Court of King’s Bench or a justice of the peace other than a non-presiding justice of the peace under the *Justice of the Peace Act*, and includes

- (a) the scheduling of judges and trials,
- (b) the content of judicial training programs,
- (c) statistics of judicial activity prepared by or on behalf of a judge, and
- (d) any record of the Judicial Council established under Part 6 of the *Judicature Act*.

(7) In this section, “political staff” means political staff as defined in the regulations.

(8) For the purposes of subsection (1)(x) and (y), a non-arm’s length transaction is any transaction that has been approved by

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

**Relationship to other Acts**

**5** 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.

**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 under this Act.

### **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

- (a) be in writing,
- (b) be submitted to the public body the applicant believes has custody or control of the record,
- (c) provide enough detail to enable the public body to locate and identify the record within a reasonable time with reasonable effort, and
- (d) be accompanied by a fee where a fee is required under this Act.

**(3)** If a request does not provide enough detail to enable a public body to locate or identify a record within a reasonable time with reasonable effort, the public body may request further information from the applicant that is necessary to process the request, and the applicant shall respond within 30 business days with the information being requested.

**(4)** In a request, the applicant may ask

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

### **Requests by public bodies**

**8** A public body may not make a request to another public body under section 7(1) to obtain access to a record in the custody or under the control of the other public body.

### **Power to disregard requests**

**9(1)** The head of a public body may disregard a request made under section 7(1) if

- (a) responding to the request would unreasonably interfere with the operations of the public body or amount to an

abuse of the right to make a request because the request has been made repeatedly or in a systematic nature,

- (b) the request is abusive, threatening, frivolous or vexatious or is made in an abusive or threatening manner,
- (c) the information the request relates to has already been provided to the applicant, or has been made available to the public under section 90 or 91,
- (d) despite receiving further information from an applicant under section 7(3), the request does not meet the requirements of section 7(2)(c) because the public body does not have information that is sufficiently clear to enable the public body to locate and identify the record within a reasonable time with reasonable effort, or
- (e) the request is otherwise overly broad or incomprehensible.

**(2)** Where the head of a public body has disregarded a request, the applicant must be told

- (a) the reasons for the decision to disregard the request, and
- (b) that the applicant may ask for a review of that decision under Part 3.

**(3)** The public body must notify the applicant that the applicant's request has been disregarded within 30 business days after the public body receives the request.

**(4)** Despite subsection (3), if the applicant's request is being disregarded under subsection (1)(d), the public body must notify the applicant that the applicant's request has been disregarded within 30 days after receiving the applicant's response to the public body's request for further information under section 7(3).

#### **Abandoned request**

**10(1)** Where the head of a public body contacts an applicant in writing respecting the applicant's request, including

- (a) seeking further information from the applicant that is necessary to process the request, including but not limited to a request for further information under section 7(3), or

- (b) requesting the applicant to pay a fee or to agree to pay a fee,

and the applicant fails to respond to the head of the public body, as requested by the head, within 30 business days after being contacted, the head of the public body may, by notice in writing to the applicant, declare the request abandoned.

- (2) A notice under subsection (1) must state that the applicant may ask for a review under Part 3.

#### **Continuing request**

**11(1)** An 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) The head of 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**

**12(1)** Subject to the regulations, the head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely, and in accordance with the regulations.

(2) The head of a public body must, subject to the exceptions set out in this Act, provide an applicant access to a record if providing the record

- (a) can be done using the public body's normal computer hardware and software and technical expertise,

- (b) would not unreasonably interfere with the operations of the public body, and
- (c) would be reasonable and practical.

**Time limit for responding**

**13(1)** The head of a public body must make every reasonable effort to respond to a request not later than 30 business days after the requirements of section 7(2) have been met unless

- (a) the request has been disregarded under section 9 or declared abandoned under section 10,
- (b) the time limit is extended under section 16, or
- (c) the request has been transferred under section 17 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**

**14(1)** In a response under section 13, 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 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 email address, telephone number or other contact information to which the applicant may direct 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 independent 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 21 or 23, 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**

**15(1)** If an applicant is told under section 14(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 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.

**(4)** 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 time limit for responding**

**16(1)** The head of a public body may extend the time for responding to a request for up to 30 business days if

- (a) the applicant agrees,
- (b) a large number of records are requested and more time is required to process the request, or

(c) more time is needed to consult with a third party, another public body or another entity before deciding whether to grant access to a record.

**(2)** The head of a public body may extend the time for responding to a request for additional reasonable periods in a circumstance described in subsection (1)(a) to (c).

**(3)** The head of a public body may extend the time for responding to a request if multiple concurrent requests have been made by the same applicant or by 2 or more applicants who work for the same organization or who work in association with each other.

**(4)** Where the head of a public body is considering giving access to a record that may contain information

(a) described in section 19(1) or (2), or

(b) the disclosure of which may be an unreasonable invasion of a third party's personal privacy under section 20,

the head of a public body may extend the time for responding to a request or part of a request for the period of time necessary to enable the head to comply with the requirements of section 36.

**(5)** If the time for responding to a request is extended under subsection (1), (2), (3) or (4), 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 request a review of the extension by the Commissioner.

**(6)** Notwithstanding anything to the contrary in subsection (5), if the time for responding to a request is extended under subsection (1), (2), (3) or (4) by the Commissioner, acting as the head of a public body, the Commissioner must tell the applicant that the applicant may seek a review by an independent adjudicator with respect to the extension.

**(7)** Where a third party asks for a review under section 58(2) or 79(3), the time for responding to a request or part of a request is automatically extended with respect to a record or part of a record

that is the subject of the request for review until the review and inquiry process has concluded.

**(8)** If the time for responding to a request or part of a request is automatically extended under subsection (7), the public body must notify the applicant of the extension and the basis for the extension.

**(9)** The time for responding to a request is automatically extended during an emergency, disaster or other unforeseen event that results in an unplanned operational closure or interruption.

**(10)** If the time for responding to a request is automatically extended under subsection (9), the public body must

- (a) notify the Commissioner as soon as practicable
  - (i) of the emergency, disaster or other unforeseen event and the anticipated end to the unplanned operational closure or interruption, and
  - (ii) of the date when the emergency, disaster or other unforeseen event has ended or when normal operations have resumed,

and

- (b) notify the applicant as soon as practicable
  - (i) when normal operations have resumed,
  - (ii) when a response to the applicant's request may be expected, and
  - (iii) that the applicant may request a review of the extension by the Commissioner.

#### **Transferring a request**

**17(1)** Within 15 business 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 30 business days after receiving the request unless that time limit is extended under section 16.

**Request under section 7 deemed to be a request under HIA**

**18(1)** If a request is made under section 7(1) for access to a record that contains information to which the *Health Information Act* applies, the part of the request that relates to that information is deemed to be a request under section 8(1) of the *Health Information Act*, and that Act applies as if the request had been made under section 8(1) of that Act.

**(2)** Subsection (1) does not apply if the public body that receives the request is not a custodian as defined in the *Health Information Act*.

**Division 2  
Exceptions to Disclosure**

**Disclosure harmful to business interests of a third party**

**19(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 about a third party 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 a public body 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**

**20(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 not an unreasonable invasion of a third party's personal privacy if

- (a) the third party has, in the prescribed manner, consented to or requested the disclosure,

- (b) there are compelling circumstances affecting anyone's health or safety and written notice of the disclosure is given to the third party,
- (c) an Act of Alberta or Canada authorizes or requires the disclosure,
- (d) 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,
- (e) the disclosure reveals financial and other details of a contract to supply goods or services to a public body,
- (f) the information is about a licence, permit or other similar discretionary benefit granted to the third party by a public body relating to
  - (i) a commercial or professional activity, or
  - (ii) real property, including a development permit or building permit,

and the disclosure is limited to the name of the third party and the nature of the licence, permit or other similar discretionary benefit,
- (g) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body,
- (h) the personal information is about an individual who has been dead for 25 years or more, or
- (i) subject to subsection (3), the disclosure is not contrary to the public interest and reveals only the following personal information about a third party:
  - (i) enrolment in a school of an educational body or in a program offered by a post-secondary educational body;
  - (ii) attendance at or participation in a public event or activity related to a public body, including a

graduation ceremony, sporting event, cultural program or club, or a field trip;

- (iii) receipt of an honour or award granted by or through a public body.

**(3)** The disclosure of personal information under subsection (2)(i) is an unreasonable invasion of personal privacy if the third party whom the information is about has requested that the information not be disclosed.

**(4)** 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 is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an 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 an individual's bank account information or credit card information,
- (g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,
- (h) the personal information consists of the third party's name or a unique identifier with respect to the third party when
  - (i) the name or unique identifier appears with other personal information about the third party, or

- (ii) the disclosure of the name or unique identifier itself would reveal personal information about the third party,

or

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

**(5)** In determining under subsections (1) and (4) 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,
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and
- (i) the personal information was originally provided by the applicant.



### **Disclosure harmful to individual or public safety**

**21(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 a physician, a regulated member of the College of Alberta Psychologists or a psychiatrist or any other appropriate expert depending on the circumstances of the case, the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's health or safety.

**(3)** The head of a public body may refuse to disclose to an applicant information that reveals the identity of an individual who has provided information to the public body in confidence about a threat to an individual's safety or mental or physical health.

### **Confidential evaluations**

**22(1)** The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled for the purpose of determining the applicant's suitability, eligibility or qualifications for employment or for the awarding of contracts or other benefits by a public body when the information is provided, explicitly or implicitly, in confidence.

**(2)** The head of a public body may refuse to disclose to an applicant personal information that identifies or could reasonably identify a participant in a formal employee evaluation process concerning the applicant when the information is provided, explicitly or implicitly, in confidence.

**(3)** For the purpose of subsection (2), "participant" includes a peer, subordinate or client of an applicant, but does not include the applicant's supervisor or superior.

**Disclosure harmful to law enforcement**

**23(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,
- (c) disclose activities suspected of constituting threats to the security of Canada within the meaning of the *Canadian Security Intelligence Service Act* (Canada),
- (d) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,
- (e) reveal the identity of a confidential source of law enforcement information,
- (f) reveal criminal intelligence that has a reasonable connection with the detection, prevention or suppression of organized criminal activities or of serious and repetitive criminal activities,
- (g) interfere with or harm an ongoing or unsolved law enforcement investigation, including a police investigation,
- (h) reveal any information relating to or used in the exercise of prosecutorial discretion,
- (i) deprive a person of the right to a fair trial or impartial adjudication,
- (j) reveal a record that has been confiscated from a person by a peace officer in accordance with a law,
- (k) facilitate the escape from custody of an individual who is being lawfully detained,
- (l) facilitate the commission of an unlawful act or hamper the control of crime,
- (m) reveal technical information relating to weapons or potential weapons,

- (n) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system, or
  - (o) reveal information in a correctional record supplied, explicitly or implicitly, in confidence.
- (2)** Subsection (1)(h) does not apply to information that has been in existence for 10 years or more.
- (3)** The head of a public body may refuse to disclose information to an applicant if the information is
- (a) 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) 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.
- (4)** 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.
- (5)** Subsections (1) and (3) 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 (3).
- (6)** After a police investigation is completed, the head of a public body may disclose under this section the reasons for a decision not to prosecute to
- (a) 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) any other member of the public, if the fact of the investigation was made public.

#### **Workplace investigations**

**24** The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

- (a) interfere with, prejudice or otherwise harm a workplace investigation, or
- (b) cause harm to a witness or third party, or prevent a witness from coming forward as a witness, in a workplace investigation.

#### **Disclosure and complaints**

**25(1)** The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal the identity of a person who has requested advice about making a disclosure, made a disclosure or submitted a complaint of a reprisal or whose complaint has been referred to the Labour Relations Board pursuant to the *Public Interest Disclosure (Whistleblower Protection) Act*.

**(2)** Subsection (1) does not apply to the person who requested advice about making a disclosure, made the disclosure, submitted the complaint of a reprisal or whose complaint has been referred to the Labour Relations Board pursuant to the *Public Interest Disclosure (Whistleblower Protection) Act*.

#### **Disclosure harmful to intergovernmental relations**

**26(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) an aboriginal organization that exercises government functions, including
  - (A) the council of a band as defined in the *Indian Act* (Canada), and
  - (B) an organization established to negotiate or implement, on behalf of aboriginal people, a treaty or land claim agreement with the Government of Canada;
- (iv) the government of a foreign state;
- (v) an international organization of states,

or

- (b) reveal information supplied, explicitly or implicitly, in confidence by a government, local government 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 government 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**

**27(1)** The head of a public body must refuse to disclose to an applicant a record that

- (a) was submitted to or prepared for submission to the Executive Council, the Treasury Board or a committee of the Executive Council or Treasury Board, or
- (b) was created by or on behalf of the Executive Council, the Treasury Board or a committee of the Executive Council or Treasury Board.

(2) The head of a public body must refuse to disclose to an applicant information that would reveal the subject or substance of deliberations of the Executive Council or any of its committees or of the Treasury Board or any of its committees, including any background or factual information, and any advice, analysis, 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.

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

#### **Local public body confidences**

**28(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, bylaw 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, bylaw 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**

**29(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, including background factual

information and information provided for informational purposes only,

- (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
    - (i) the governing body of an agency, board, commission, corporation, office or other body designated as a public body in the regulations, or
    - (ii) 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 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)** 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.

**(4)** Subsection (3) does not apply to a record or information described in that subsection if

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



- (b) 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.

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

**Disclosure harmful to economic and other interests of a public body**

**30(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) information obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee or the public body of priority of publication;
- (e) information about the labour relations of a public body, including information used by a public body during collective bargaining conducted by or on behalf of a public body.

**(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**

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

- (a) testing or auditing procedures or techniques,
- (b) details of specific tests to be given or audits to be conducted, or
- (c) standardized tests used by a public body, including intelligence tests,

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

**Privileged information**

**32(1)** The head of a public body may refuse to disclose to an applicant

- (a) information or a record that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege,
- (b) information prepared by or for
  - (i) the Minister of Justice,
  - (ii) an agent or lawyer of the Minister of Justice, or
  - (iii) an agent or lawyer of a public bodyin relation to a matter involving the provision of legal services, or
- (c) information in correspondence between

- (i) the Minister of Justice,
- (ii) an agent or lawyer of the Minister of Justice, or
- (iii) an agent or lawyer of a public body

and any other person in relation to a matter involving the provision of advice or other services by the Minister of Justice or by the agent or lawyer.

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

**(3)** Only the Speaker of the Legislative Assembly may determine whether information is subject to parliamentary privilege, and a public body must not disclose information that may be subject to parliamentary privilege without the Speaker's consent.

**Disclosure harmful to conservation of heritage sites, etc.**

**33** 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 any

- (a) historic resource as defined in the *Historical Resources Act*, or
- (b) rare, endangered, threatened or vulnerable form of life.

**Information that is or will be available to the public**

**34(1)** The head of a public body may refuse to disclose to an applicant information that is

- (a) readily available to the public,
- (b) available for purchase by the public, or
- (c) to be published or released to the public within 60 business 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)(c).

**(3)** If the information is not published or released within 60 business 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 business day of that period, and access to the information requested must not be refused under subsection (1)(c).

### **Division 3 Third Party Intervention**

#### **Notifying third parties**

**35(1)** When the head of a public body is considering giving access to a record that may contain information

- (a) described in section 19(1) or (2), or
- (b) the disclosure of which may be an unreasonable invasion of a third party's personal privacy under section 20,

the head must, where practicable and as soon as practicable, give written notice to the third party in accordance with subsection (5).

**(2)** Subsection (1) does not apply to information that the head of a public body may refuse to disclose in accordance with section 34.

**(3)** Subsection (1) does not apply to a record containing information described in section 20(2)(i).

**(4)** If the head of a public body does not intend to give access to a record that contains information excepted from disclosure under section 19 or 20, the head may give written notice to the third party in accordance with subsection (5).

**(5)** 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 business 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.

- (6)** 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 business days after the day notice is given under subsection (1).

**Time limit and notice of decision**

**36(1)** Within 30 business days after notice is given under section 35(1) or (4), the head of the public body must decide whether to give access to the record or to part of the record, but no decision may be made before the earlier of

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

**(2)** The 30-day period referred to in subsection (1) may be extended during an emergency, disaster or other unforeseen event that results in an unplanned operational closure or interruption.

**(3)** If the 30-day period is extended under subsection (2), the head of the public body must

- (a) notify the Commissioner of the date when the emergency, disaster or other unforeseen event has ended or when normal operations have resumed, and
- (b) notify the applicant and the third party as soon as practicable
  - (i) when normal operations have resumed,
  - (ii) when a decision may be expected, and
  - (iii) that the applicant or third party may request a review of the extension by the Commissioner.

(4) 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.

(5) If the head of the public body decides to give access to the record or part of the record, the notice under subsection (4) must state that the applicant will be given access unless the third party asks for a review under Part 3 within 20 business days after that notice is given.

(6) If the head of the public body decides not to give access to the record or part of the record, the notice under subsection (4) must state that the applicant may ask for a review under Part 3.

(7) Subsection (5) does not apply where the third party has consented to the disclosure of the record or the part of the record.

#### **Division 4 Public Health and Safety**

##### **Information must be disclosed if in the public interest**

**37(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 give written notice of the disclosure to

- (a) the third party, and
- (b) the Commissioner.

## **Part 2**

### **Office and Powers of Information and Privacy Commissioner**

#### **Definition**

**38** In this Part, “Standing Committee” means the Standing Committee on Legislative Offices.

#### **Appointment of Commissioner**

**39(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**

**40(1)** Except as provided for in section 41, the Commissioner holds office for a term not exceeding 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**

**41(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**

**42(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 39(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 39(1),
- (b) the suspension of the Commissioner ends, or
- (c) the Commissioner returns to office after a temporary absence.



### **Remuneration**

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

### **Oath**

**44(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**

**45(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 under 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*,
- (b) any regulation, order, directive, rule, procedure, direction, allocation, designation or other decision under the *Public Service Act*, or
- (c) any regulation, order, determination, direction or other decision under the *Public Sector Compensation Transparency 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) An order made under subsection (3)(c) in relation to a regulation, order, determination, direction or other decision under the *Public Sector Compensation Transparency Act* operates notwithstanding that Act.

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

(7) 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 business days after the start of the next sitting.

(8) 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.

#### **Financing of operations**

**46(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 under subsection (1) and, on the completion of the review, the chair of the Committee must transmit the estimate to the President of Treasury Board and Minister of Finance 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 President of Treasury Board and Minister of Finance reports that

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

(b) 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 the Lieutenant Governor authorizing the expenditure of the amount estimated to be required.

**(4)** For the purposes of subsection (3), when the Legislative Assembly is adjourned for a period of more than 14 business days, the Assembly is 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 in accordance with 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 His Majesty sums of money to defray certain expenditures of the Public Service of Alberta.

#### **Records management**

**47** On the recommendation of the Commissioner, the Standing Committee may make an order

- (a) respecting the management of records in the custody or under the control of the Office of the Information and

Privacy Commissioner, including their creation, handling, control, organization, retention, maintenance, security, preservation, disposition, alienation and destruction and their transfer to the Provincial Archives of Alberta,

- (b) establishing or governing the establishment of programs for any matter referred to in clause (a),
- (c) defining and classifying records, and
- (d) respecting the records or classes of records to which the order or any provision of it applies.

#### **General powers of Commissioner**

**48(1)** In addition to the Commissioner's powers and duties under Part 3 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 or compliance with rules relating to the destruction of records
  - (i) set out in any other enactment of Alberta, or
  - (ii) set out in a bylaw, resolution or other legal instrument by which a local public body acts or, if a local public body does not have a bylaw, resolution or other legal instrument setting out rules related to the destruction of records, as authorized by the governing body of a local public body,
- (b) make an order under section 64(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 of proposed legislative schemes or programs of public bodies,

- (g) bring to the attention of the head of a public body any failure by the public body to assist applicants under section 12, and
- (h) 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 12 has not been performed,
- (b) an extension of time for responding to a request is not in accordance with section 16, and
- (c) a fee required under this Act is inappropriate.

#### **Advice and recommendations**

**49(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 provide the head with advice and recommendations in writing 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.

#### **Powers of Commissioner in conducting investigations or inquiries**

**50(1)** In conducting an investigation under section 48(1)(a) or an inquiry under section 62 or 71 or in giving advice and recommendations under section 49, the Commissioner has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act* and the powers given by subsection (2).

(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, a public body must produce to the Commissioner within 10 business 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 investigation, the Commissioner must

- (a) return any original paper record produced to the Commissioner, and
- (b) destroy any copy of any record, including any electronic record, produced to the Commissioner.

**(6)** Despite subsections (1) to (3), the Commissioner must not require any of the following records or information to be produced to the Commissioner:

- (a) a record or information described in section 4(1)(a), (t) or (w);
- (b) a record or information described in section 27;
- (c) a record or information described in section 32(1)(a) or (2).

**(7)** The Commissioner may require the public body who has refused to produce a record or information on the basis that subsection (6)(b) applies to attest, in accordance with the regulations, that the record or information is a record or information described in section 27.

**Statements made to Commissioner not admissible in evidence**

**51(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 in

- (a) a prosecution for perjury in respect of sworn testimony,

- (b) a prosecution for an offence under this Act, or
- (c) 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**

**52** 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 Commissioner and staff**

**53(1)** The Commissioner, and anyone acting for or under the direction of the Commissioner, must not disclose any information obtained in performing their powers, duties 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 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 51.

#### **Protection of Commissioner and staff**

**54** 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 power, duty or function under this Part or Part 3.

#### **Delegation by Commissioner**

**55(1)** The Commissioner may delegate to any person any power, duty or function of the Commissioner under this Act, except the power to delegate.

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

#### **Role of Ombudsman**

**56** 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**

**57(1)** The Commissioner must submit a written report annually to the Speaker of the Legislative Assembly on

- (a) the work of the Commissioner's office,
- (b) any reviews resulting from a decision, act or failure to act of the Commissioner as head of a public body, and
- (c) any other matters relating to freedom of information that the Commissioner considers appropriate.



(2) The Speaker must lay each annual report before the Legislative Assembly as soon as possible.

## **Part 3 Reviews and Complaints**

### **Division 1 Reviews by Commissioner**

#### **Right to ask for review by Commissioner**

**58(1)** A person who makes a request to the head of a public body for access to a record 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 36 of a decision by the head of a public body to give access may ask the Commissioner to review that decision.

(3) 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 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.

#### **How to ask for review by Commissioner**

**59(1)** To ask for a review under this Division, a written request must be delivered to the Commissioner and the head of the public body that received the request for access that the review relates to.

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

- (a) if the request is made under section 58(1), within
  - (i) 60 business days after the person asking for the review is notified of the decision, act or failure to act that is the subject of the request, or

- (ii) any longer period of up to 30 additional business days allowed by the Commissioner,

or

- (b) if the request is made under section 58(2), within 20 business days after the person asking for the review is notified of the decision.

**(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 by Commissioner**

**60(1)** 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.

**(2)** A third party who asked for a review under section 58(2) and the public body concerned may each identify one or more persons who are affected by the review and if, in the opinion of the Commissioner it is appropriate to do so, the Commissioner may

- (a) give a copy of the request to those persons, and

- (b) provide a summary of the review procedures and an anticipated date for a decision on the review to those persons.

**(3)** The Commissioner may sever any information in the request that the Commissioner considers appropriate before giving a copy of the request under this section.

#### **Mediation may be authorized**

**61** 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**

**62(1)** Subject to subsections (2), (3) and (4), if a matter is not settled under section 61, the Commissioner must conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

**(2)** The Commissioner may refuse to conduct an inquiry if, in the opinion of the Commissioner,

- (a) the subject-matter of a request for a review under section 58 has been dealt with in an order or investigation report of the Commissioner,
- (b) the person who asked for a review has not attempted to resolve the matter directly with the public body concerned, or
- (c) the circumstances otherwise warrant refusing to conduct an inquiry.

**(3)** The Commissioner must not commence an inquiry until the Commissioner notifies the person who asked for the review of the pending inquiry, and the person who asked for the review confirms in writing to the Commissioner that the person wants the inquiry to proceed.

**(4)** If the person who asked for the review does not confirm in writing, within 30 business days of being notified of the pending inquiry under subsection (3), that the person wants the inquiry to proceed, the inquiry will not be conducted.

- (5)** An inquiry may be conducted in private.
- (6)** 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.
- (7)** The Commissioner may decide whether the representations are to be made orally or in writing.
- (8)** 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.
- (9)** The Commissioner must complete an inquiry within 180 business days after receiving the request for the review unless
- (a) the Commissioner has refused under subsection (2) to conduct an inquiry,
  - (b) the inquiry will not be conducted pursuant to subsection (4),
  - (c) the Commissioner discontinues the inquiry under subsection (11), or
  - (d) the Commissioner
    - (i) 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
    - (ii) provides an anticipated date for the completion of the inquiry.
- (10)** An extension under subsection (9)(d) must not exceed a total of 180 business days beyond the original 180 business days for completing an inquiry unless there is an emergency, disaster or other unforeseen event that, in the opinion of the Commissioner, necessitates a further extension.
- (11)** The Commissioner may discontinue an inquiry if, in the opinion of the Commissioner, it is appropriate to do so.

(12) If the Commissioner discontinues an inquiry under subsection (11), the Commissioner must give notice in writing to 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, and the notice must include the reasons for the discontinuation.

#### **Burden of proof**

**63(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.

#### **Commissioner's orders**

**64(1)** On completing an inquiry under section 62, 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;
  - (d) order that no further action is required.
- (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 16;
  - (c) confirm or reduce a fee or order a refund, in the appropriate circumstances, including if a time limit is not met.
- (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 to
- (a) the person who asked for the review,
  - (b) the head of the public body concerned,
  - (c) any other person given a copy of the request for the review, and
  - (d) 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 King's Bench and, after filing, the order is enforceable as a judgment or order of that Court.

**No appeal**

**65** An order made by the Commissioner under this Act is final.

### **Duty to comply with orders**

**66(1)** Subject to subsection (2), not later than 50 business days after being given a copy of an order of the Commissioner, the head of a public body concerned must comply with the order.

**(2)** The head of a public body must not take any steps to comply with a Commissioner's order until the period for bringing an application for judicial review under subsection (3) ends.

**(3)** An application for judicial review of a Commissioner's order must be made to the Court of King's Bench not later than 45 business days after the person making the application is given a copy of the order.

**(4)** If an application for judicial review is made in accordance with subsection (3), the Commissioner's order is stayed until

- (a) the application is dealt with by the Court of King's Bench and the period for making an appeal of the decision of the Court of King's Bench to the Court of Appeal ends, or
- (b) the appeal of the decision of the Court of King's Bench to the Court of Appeal is dealt with by the Court of Appeal, if an appeal of that decision is made to the Court of Appeal.

**(5)** Despite subsection (3), the Court of King's Bench, on application made either before or after the expiry of the period referred to in subsection (3), may extend that period if it considers it appropriate to do so.

## **Division 2 Reviews of Decisions of the Registrar of Motor Vehicle Services**

### **Definitions**

**67** In this Division,

- (a) "personal driving and motor vehicle information" means personal driving and motor vehicle information as defined in section 8(1) of the *Traffic Safety Act*;
- (b) "Registrar" means the Registrar of Motor Vehicle Services.

### **Right to ask for review by Commissioner**

**68(1)** Despite section 4(1)(o)(ii), if a person makes a request to the Registrar for access to personal driving and motor vehicle information and a notification is published in accordance with the regulations made under section 8 of the *Traffic Safety Act*, the Commissioner may review the Registrar's decision as set out in the notification.

**(2)** The following may ask the Commissioner to review a decision of the Registrar that is set out in a notification referred to in subsection (1):

- (a) an individual who believes that the individual's own personal driving and motor vehicle information may be released as a result of the Registrar's decision;
- (b) the person who made the request to the Registrar for access to personal driving and motor vehicle information.

### **How to ask for review by Commissioner**

**69(1)** To ask for a review under this Division, a written request must be delivered to the Commissioner.

**(2)** A request for a review under this Division must be delivered to the Commissioner within 60 days after the date the notification of the decision was published in accordance with the regulations under section 8 of the *Traffic Safety Act*.

### **Notifying others of review by Commissioner**

**70(1)** On receiving a request for a review, the Commissioner must as soon as practicable

- (a) give a copy of the request
  - (i) to the Registrar, and
  - (ii) to any person the Commissioner considers appropriate,

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 Registrar, and
- (iii) to any person the Commissioner considers appropriate.

**(2)** Despite subsection (1)(a), the Commissioner may sever any information in the request that the Commissioner considers appropriate before giving a copy of the request to the Registrar or a person referred to in subsection (1)(a)(ii).

#### **Inquiry by Commissioner**

**71(1)** Unless section 72 applies, 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 Registrar 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 Registrar 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 Registrar 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.

### **Refusal to conduct inquiry**

**72** The Commissioner may refuse to conduct an inquiry pursuant to section 71 if, in the opinion of the Commissioner,

- (a) the subject-matter of the request for a review has been dealt with in an order of the Commissioner, or
- (b) the circumstances warrant refusing to conduct an inquiry.

### **Commissioner's orders**

**73(1)** On completing an inquiry under section 71, the Commissioner must dispose of the issues by making an order under this section.

**(2)** The Commissioner may, by order, do the following:

- (a) require the Registrar to give the person who made the request access to all or part of the personal driving and motor vehicle information to which access was requested if the Commissioner determines that the Registrar is not authorized to refuse access under the regulations made under section 8 of the *Traffic Safety Act*;
- (b) either confirm the decision of the Registrar or require the Registrar to reconsider it if the Commissioner determines that the Registrar is authorized to refuse access under the regulations made under section 8 of the *Traffic Safety Act*;
- (c) require the Registrar to refuse access to all or part of the personal driving and motor vehicle information if the Commissioner determines that the Registrar is required under the regulations made under section 8 of the *Traffic Safety Act* to refuse access.

**(3)** The Commissioner may specify any terms or conditions in an order made under this section.

**(4)** 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 Registrar,

- (c) to any other person given a copy of the request for the review,
- (d) to the Minister, and
- (e) to the Minister designated under section 16 of the *Government Organization Act* as the Minister responsible for the *Traffic Safety Act*.

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

#### **No appeal**

**74** An order made by the Commissioner under this Division is final.

#### **Duty to comply with orders**

**75(1)** Subject to subsection (2), not later than 50 days after being given a copy of an order of the Commissioner, the Registrar must comply with the order.

(2) The Registrar must not take any steps to comply with a Commissioner's order until the period for bringing an application for judicial review under subsection (3) ends.

(3) An application for judicial review of a Commissioner's order must be made not later than 45 days after the person making the application is given a copy of the order.

(4) If an application for judicial review is made pursuant to subsection (3), the Commissioner's order is stayed until the application is dealt with by the Court.

(5) Despite subsection (3), the Court may, on application made either before or after the expiry of the period referred to in subsection (3), extend that period if it considers it appropriate to do so.

#### **Application of other sections**

**76** Sections 48(1)(a) and 49 and Division 1 do not apply to a review under this Division.

**Division 3**  
**Investigations and Reviews by**  
**Independent Adjudicator**

**Independent adjudicator to investigate  
complaints and review decisions**

**77(1)** The Minister may make an order designating a judge of the Court of King's Bench to act as an independent 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 48(2),
- (b) if the person 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 48(2) made against that person when acting as the head of that office,
- (c) to investigate complaints respecting any matter referred to in section 48(2) made against a head of a public body if the Commissioner was a member, employee or head of that public body during the relevant period or, in the Commissioner's opinion, the Commissioner has a conflict with respect to that public body,
- (d) to review, if requested under section 79, any decision, act or failure to act of the Commissioner as the head of the Office of the Information and Privacy Commissioner,
- (e) if the person appointed as the Commissioner is, at the same time, appointed as any other officer of the Legislature, to review, if requested under section 79, any decision, act or failure to act of that person when acting as the head of that office, and
- (f) to review, if requested under section 80, a decision, act or failure to act of a head of a public body if the Commissioner was a member, employee or head of that public body during the relevant period or, in the Commissioner's opinion, the Commissioner has a conflict with respect to that public body.

**(2)** An independent adjudicator must not review an order of the Commissioner made under this Act.

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

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

- (a) to an independent adjudicator, the expenses a judge is entitled to receive under subsection 57(3) of the *Judges Act* (Canada) while acting as an adjudicator, and
- (b) to a person whose services are retained under subsection (3), remuneration for those services.

**Powers, duties, functions and protections of independent adjudicator**

**78(1)** For the purposes of section 77, an independent adjudicator has the powers, duties and functions given to the Commissioner by sections 48(2), 50 and 53(1), (2)(a) and (3) to (5).

(2) Sections 51, 52, 54 and 56 apply for the purposes of an investigation, inquiry or review by an independent adjudicator.

**Right to ask for review by independent adjudicator**

**79(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 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.

(2) A person who makes a request to the Commissioner for access to a record may ask an independent 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 36 of a decision by the Commissioner to give access may ask an independent adjudicator to review that decision.

### **Review where Commissioner in conflict**

**80(1)** This section applies where the Commissioner is asked under section 58(1) or (2) to review a decision, act or failure to act of a head of a public body if the Commissioner was a member, employee or head of that public body during the relevant period or, in the Commissioner's opinion, the Commissioner has a conflict with respect to that public body.

**(2)** A person who makes a request to the head of a public body for access to a record may ask an independent adjudicator to review any decision, act or failure to act of the head of the public body that relates to the request.

**(3)** A third party notified under section 36 of a decision by the head of a public body to give access may ask an independent adjudicator to review that decision.

### **How to ask for review by independent adjudicator**

**81(1)** To ask for a review under this Division, a written request must be delivered to the Minister and the Commissioner.

**(2)** A request for a review must be delivered

(a) if the request is made under section 79(2) or 80(2), within

(i) 60 business days after the person asking for the review is notified of the decision, act or failure to act that is the subject of the request, or

(ii) any longer period of up to 30 additional business days allowed by the independent adjudicator,

or

(b) if the request is made under section 79(3) or 80(3), within 20 business days after the person asking for the review is notified of the decision.

**(3)** The failure of the Commissioner, as the head of a public body, to respond within the period required by this Act, including any extended period permitted by this Act, to a request for access to a record is to be treated as a decision to refuse access to the record, but the time limit in subsection (2)(a) for delivering a request for review does not apply.

### **Notifying others of review by independent adjudicator**

**82(1)** On receiving a request for a review, the Minister must as soon as practicable

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

and

- (c) provide a summary of the review procedures to
  - (i) the person who asked for the review,
  - (ii) the Commissioner, and
  - (iii) any other person who in the opinion of the Minister is affected by the request.

**(2)** A third party who has asked for a review under section 79(3) or 80(3) and the Commissioner may each identify one or more persons who are affected by the review being requested, and the independent adjudicator may

- (a) give a copy of the request to those persons, and
- (b) provide a summary of the review procedures and an anticipated date for a decision on the review to those persons.

**(3)** The independent adjudicator may sever any information in the request the independent adjudicator considers appropriate before giving a copy of the request under this section.

### **Conduct and outcome of review**

**83(1)** An independent adjudicator has the powers and duties given to the Commissioner by sections 61 and 62(1), (2), (3), (5), (7), (11) and (12) and sections 62(6) and (8) and 63 apply to an inquiry conducted by an independent adjudicator.

(2) On completing an inquiry, an independent adjudicator has the same duty to dispose of the issues, the same power to make orders and the same duty to give copies of those orders as the Commissioner has under section 64(1) to (5).

(3) An independent adjudicator must give a copy of an order made by the independent adjudicator under this Act to the Commissioner.

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

(5) Section 66 applies to an order of an independent adjudicator.

(6) An order made by an independent adjudicator under this Act is final.

#### **Division 4 Disclosure to Commissioner**

##### **Disclosure to Commissioner**

**84(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 ought to be disclosed by a head under section 37.

(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 for doing any of the following, unless the employee acted in bad faith:

- (a) copying a record or disclosing it to the Commissioner;
- (b) disclosing information to the Commissioner.

(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, has



- (a) disclosed information to the Commissioner under this section, or
- (b) exercised or may exercise a right under this section.

(6) A person who contravenes 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 50, 53, 61, 62 and 64(1) to (5), and sections 51, 52, 54 and 56 apply.

## **Part 4 General Provisions**

### **Manner of giving notice**

**85** 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,
- (d) by fax, or
- (e) in an electronic form other than fax if that person's contact information for that electronic form is publicly available or has been provided by that person.

### **Exercise of rights by other persons**

**86(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 *Adult Guardianship and Trusteeship 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 an agent has been designated under a personal directive under the *Personal Directives Act*, by the agent under the authority of the directive if the directive so authorizes,
- (d) 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,
- (e) 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 personal privacy of the minor, or
- (f) 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 head of public body**

**87(1)** The head of a public body may delegate to any person any power, duty 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**

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

#### **Directory of public bodies**

**89(1)** The Minister must publish, in printed or electronic form, a directory to assist in identifying and locating records.

(2) The directory must list each public body and include for each public body

- (a) the business contact information for the public body for matters relating to the administration of this Act, or
- (b) if the public body does not have a contact person for matters relating to the administration of this Act, the name and business contact information of the head of the public body.

**Records available without request**

**90(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) Any information that the head of a public body would be authorized or required to refuse to give access to under this Act may be excluded from a record that is available to the public without a request for access under this Act.

(3) 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, unless such a record can otherwise be accessed without a fee.

(4) 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.

(5) Despite anything to the contrary in this Act, there is no right to request a review in relation to a decision respecting whether to make a record available to the public under this section.

**Access to manuals, handbooks and guidelines**

**91(1)** The head of every public body must make any manual, handbook or other guideline used by employees of the public body in decision-making processes that affect the public available to the public without a request for access under this Act.

(2) Any information that the head of a public body would be authorized or required to refuse to give access to under this Act may be excluded from the manuals, handbooks or other guidelines that must be made available to the public under subsection (1).

(3) The head of a public body may require a person who asks for a copy of a manual, handbook or other guideline to pay a fee to the public body unless the manual, handbook or other guideline can otherwise be accessed without a fee.

(4) Subsection (1) does not limit the discretion of the Government of Alberta or a public body to release a manual, handbook or other guideline that does not contain personal information.

#### **No right to request publicly available records**

**92** A person may not make a request to a public body under section 7(1) to obtain access to a record that is made available to the public under section 90 or 91.

#### **Protection of public body from legal suit**

**93** 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.

#### **Protection of employee**

**94(1)** A public body or person acting on behalf of a public body must not take any adverse employment action against an employee as a result of the employee properly disclosing information in accordance with this Act.

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

#### **Offences and penalties**

**95(1)** A person must not knowingly

- (a) make a false statement to, or mislead or attempt to mislead, the Commissioner or another person in the

performance of the powers, duties or functions of the Commissioner or other person under this Act,

- (b) obstruct the Commissioner or another person in the performance of the powers, duties or functions of the Commissioner or other person under this Act,
- (c) 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,
- (d) fail to comply with an order made by the Commissioner under section 64 or by an independent adjudicator under section 83(2), or
- (e) 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 \$50 000.

**(3)** A prosecution under this Act may be commenced within 2 years after the day on which evidence of the alleged offence first came to the attention of the Commissioner, but not afterwards.

### **Fees**

**96(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)** An applicant may, in writing, request that the head of a public body excuse the applicant from paying all or part of a fee for services under subsection (1).

**(5)** The head of a public body may excuse the applicant from paying all or part of a fee if, in the opinion of the head,

- (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.
- (6) If an applicant has, under subsection (4), requested the head of a public body to excuse the applicant from paying all or part of a fee, the head must give written notice of the head's decision to grant or refuse the request to the applicant within 30 business days after receiving the request.
- (7) If the head of a public body refuses an applicant's request under subsection (4), the notice referred to in subsection (6) must state that the applicant may ask for a review under Part 3.
- (8) The fees referred to in subsection (1) must not exceed the actual costs of the services.

**Power to make regulations**

**97(1)** The Lieutenant Governor in Council may make regulations

- (a) defining political staff for the purposes of section 4(1)(w);
- (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 the duty of the head of a public body to assist applicants, including respecting standards to be observed by officers or employees of a public body in fulfilling the duty to assist applicants;
- (f) prescribing the manner of giving consent for the purposes of section 20(2)(a);
- (g) 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 21(2), if disclosure of that information could reasonably

be expected to result in immediate and grave harm to the safety of or the mental or physical health of those individuals;

- (h) respecting procedures to be followed or restrictions considered necessary with respect to the disclosure and examination of information referred to in clause (g);
- (i) respecting special procedures for giving individuals access to personal information about their mental or physical health;
- (j) authorizing, for the purposes of section 28(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 of its elected officials, or of its governing body or a committee of its governing body in the absence of the public, and
  - (ii) specifies the matters that may be discussed at those meetings;
- (k) respecting attestations under section 50(7);
- (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 89;
- (q) respecting the establishment of criteria to be used for designating or de-designating agencies, boards,

commissions, corporations, offices or other bodies as public bodies;

- (r) exempting any public body or class of public body from the operation of a regulation made under this subsection;
- (s) providing that other Acts or regulations, or any provisions of them, prevail despite this Act;
- (t) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

**(2)** The Minister may, on the Minister's own initiative or at the request of another Minister, make regulations designating an agency, board, commission, corporation, office or other body as a public body in accordance with the criteria established in the regulations made under subsection (1)(q).

**(3)** The Minister, on the Minister's own initiative or at the request of another Minister, may de-designate a body designated under subsection (2) in accordance with the criteria established in the regulations made under subsection (1)(q), but only if

- (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(t)(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.

**Power to make bylaws**

**98** A local public body, by bylaw 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, and
- (b) may set any fees the local public body requires to be paid under section 96, which must not exceed the fees provided for in the regulations.

**Application of this Act**

**99** 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**

**100(1)** A special committee of the Legislative Assembly must begin a comprehensive review of this Act and the regulations

- (a) within 6 years of this Act coming into force, and
- (b) thereafter, every 6 years after the date on which the previous special committee submits its report under subsection (2).

**(2)** A special committee must submit a final report to the Legislative Assembly within 18 months after beginning a review under subsection (1).

**(3)** The report of a special committee may include the special committee's recommendations for amendments to this Act, the regulations or any other enactment.

## **Part 5 Transitional Provisions, Repeal and Coming into Force**

### **Transitional**

**101(1)** In this section, “former Act” means the *Freedom of Information and Protection of Privacy Act*.

**(2)** Notwithstanding the repeal of the former Act,

- (a) a person designated as the head of a public body for the purposes of section 1(f)(ii) of the former Act continues as the head of the public body for the purposes of this Act until a new person is designated as the head of the public body for the purposes of section 1(h)(ii) of this Act,
- (b) a person or group of persons designated as the head of a local public body under section 95(a) of the former Act continues as the head of the local public body under this Act until a new person or group of persons is designated as the head of the local public body under section 98(a) of this Act,
- (c) a request made in accordance with section 7 of the former Act prior to the coming into force of this Act will be dealt with by a public body in accordance with the former Act as it read immediately before the repeal of the former Act, and
- (d) the former Act as it read immediately before its repeal continues in effect and applies
  - (i) to a review, inquiry or investigation if the matter, decision, disclosure, act or failure to act that is the subject of the review, inquiry or investigation occurred before the repeal of the former Act, and
  - (ii) subject to subsection (3), to an offence committed under the former Act before the repeal of the former Act.

**(3)** A prosecution under the former Act of an offence committed under that Act before the repeal of the former Act may be commenced in accordance with section 95(3) of this Act.

**Repeal**

**101** The *Freedom of Information and Protection of Privacy Act* is repealed.

**Coming into force**

**103** This Act comes into force on Proclamation.

**RECORD OF DEBATE**

Stage	Date	Member	From	To
		<b>Interventions</b>	<b>From</b>	<b>To</b>
<b>Stage</b>	<b>Date</b>	<b>Member</b>	<b>From</b>	<b>To</b>
		<b>Interventions</b>	<b>From</b>	<b>To</b>
<b>Stage</b>	<b>Date</b>	<b>Member</b>	<b>From</b>	<b>To</b>
		<b>Interventions</b>	<b>From</b>	<b>To</b>
<b>Stage</b>	<b>Date</b>	<b>Member</b>	<b>From</b>	<b>To</b>
		<b>Interventions</b>	<b>From</b>	<b>To</b>
<b>Stage</b>	<b>Date</b>	<b>Member</b>	<b>From</b>	<b>To</b>
		<b>Interventions</b>	<b>From</b>	<b>To</b>