

Access and Privacy in a Local Authority

An introduction to *The Local Authority Freedom of Information and Protection of Privacy Act*

Session objective

- Provide a basic understanding of *The Local Authority Freedom of Information and Protection of Privacy Act*:
- In particular:
 - The public's right of access
 - Obligations to protect privacy

Access and Privacy Laws

- *The Local Authority Freedom of Information and Protection of Privacy Act (LAFOIP) – 1993/94*
- *The Freedom of Information and Protection of Privacy Act (FOIP) - 1992*
- *The Health Information Protection Act (HIPA) - 2003*

The Local Authority Freedom of Information and Protection of Privacy Act

- Two main purposes:
 - Access - provides a right of access to the records in the possession or under the control of a local authority; and
 - Privacy - establishes rules for the protection of personal information.

The Act applies to “local authorities”

(s.2(f))

- Municipalities
- Committees of council, boards, commissions or other bodies appointed pursuant to *The Cities Act*, *The Municipalities Act* or *The Northern Municipalities Act*.
- Libraries
- A school board or conseil scolaire
- A post-secondary institute
- A regional health authority
- A special care home
- Any board, commission or body that receives more than 50% of its budget from the province and is listed in the regulations.

Applies to Records

- Act defines a record as follows:
 - “record” means a record of information in any form and includes information that is written, photographed, recorded or stored in any manner, but does not include computer programs or other mechanisms that produce records.”
 - LAFOIP, s. 2(j)
- This includes:
 - records received and/or produced by you in your work.
 - Word documents, spreadsheets, maps, drawings, photographs, letters, vouchers, papers, electronic and optical media, e-mail, etc.
 - In the local authority’s possession or control.

The Act Does Not Apply To . . .

- Published material or material that is available for purchase by the public.
- Material that is a matter of public record
 - N.B.: “Public record” does not mean the same as “available to the public”.
- Archival material placed with the local authority by public or non-government.

Decisions made by the head

- “head” defined: (s. 2(e))
 - Municipalities:
 - Mayor, reeve, chair of the local advisory committee
 - Other local authorities:
 - Chair of the governing body
 - Person designated as head by the governing body
- May be delegated:
 - To one or more officers of the local authority
 - Must be in writing

Saskatchewan Information and Privacy Commissioner

- Applicants who are unsatisfied with the outcome of an access request can request a review.
- Individuals with concerns about privacy can request an investigation.
- The Office of the Information and Privacy Commissioner (OIPC) will:
 - Decide if a review is appropriate
 - Attempt an informal resolution
 - Proceed to a formal review and report if necessary
- Reports include recommendations and are posted on his website at www.oipc.sk.ca.

So...

- The Act applies to:
 - all records...
 - ...in a local authority.
- The head is accountable for all decisions, duties and obligations.
- Decisions may be reviewed by the OIPC.

Access to Records



Access rights are fundamental

“The overarching purpose of access to information legislation—is to facilitate democracy. It does so in two related ways. It helps to ensure first that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.”

Justice LaForest

Dagg v. Canada (Minister of Finance), [1997] 2 S.C.R. 403

LAFOIP – The right of access

- The law gives every person a ***right to access records*** of a local authority (*section 5*)
 - LAFOIP is a formal process – informal may be more appropriate. Encourage informal disclosure when appropriate.
- The law provides a process for requesting access including (*section 6*):
 - An individual can complete a prescribed form requesting access and describing the records in question.
- The law has rules that must be followed (*sections 7-12*):
 - 30 days to respond in writing.
 - Records may be severed prior to release.
 - Fees may be collected.
 - Requests may be transferred.
 - The 30 days may be extended in limited circumstances.
- There are exceptions to the right of access that must/ could be applied before access is given. (*Part III*)

LOCAL AUTHORITY FREEDOM OF INFORMATION
AND PROTECTION OF PRIVACY



Government of
Saskatchewan Freedom of
Information

PART III

Form A

Access to Information Request Form

Note: Please direct the request to the
appropriate local authority for response.

Access to Information
Request Form

(Please Print)

Applicant Information

Last Name		First Name	
Address		City or Town	Province
Postal Code	Telephone (Residence)	Telephone (Work)	Facsimile

Details of Requested Information

General Information Request <input type="checkbox"/>	Personal Information Request <input type="checkbox"/>
Name of Local Authority	
Name of Record (if known)	
Detailed Description of Record: _____ _____ _____ _____	

I understand that an application fee of \$20 is to be submitted with this request unless, with respect to a request for personal information, the fee is waived under the terms of the Act.

I also understand that there may be a processing fee to process this request and that, prior to receiving access to the records that I have requested, I am required to pay that fee unless it is waived.

☐ Check if requesting waiver of processing fee:

I request that payment of the processing fee related to this request be waived because payment will cause me substantial financial hardship. Details are as follows: (Use reverse of form if additional space is required.)

Signature of Applicant

For Office Use Only			
Date Received _____	Application No. _____		
Application Fee Received	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Expiry Date _____			

White - Local Authority Yellow - Co-ordinator Pink - Applicant



The Process

Request received – processing begins

Records located and reviewed

Exemptions applied if appropriate

Approvals obtained

The head makes a decision and the response is sent

May require:

- Fee estimates
- Extension of time
- Clarification of request
- Third party consultations
- Legal advice
- Transfer of request

30 days

saskatchewan.ca

Will result in one of three scenarios

1. Full Disclosure of Records
2. Partial Disclosure of Records
3. No Disclosure of Records

What is an exemption?

- The Act recognizes a balance between the right of access and the need to keep certain information confidential.
- “Exemptions” are provided in the Act for certain circumstances or types of records where disclosure may not be appropriate.
- Exemptions are considered before access to a record is given.

Exemptions

Applying exemptions involves an internal (and external if 3rd party info) consultation process.

- **Mandatory - the “shalls”**
 - Records from other governments obtained in confidence
 - 3rd party
 - Personal information
- **Discretionary - the “mays”**
 - Advice from Officials
 - Economic and other interests
 - Testing procedures, tests and audits
 - Danger to health or safety

Fees for access / waiver of fees

- Local authorities can charge fees for access (s.9)
- The fee schedule can be found in the regulations (s.5 LAFOIP Regulations)
- Fees can be waived (s.9(5) LAFOIP and s.8 LAFOIP Regulations)

Fees include...

(see s. 5 of the LAFOIP Regs for a complete fee schedule)

- A \$20 application fee.
- Charges for copies of records, for example:
 - 25 ¢ per page for a photocopy;
 - 25 ¢ per page for a computer printout;
- Searching and preparing a record for disclosure:
 - 1st hour is free
 - \$15 per half-hour (or portion) if more than 1 hour.
- If search and retrieval of electronic data is required, a fee equal to the actual cost, including machinery and operator costs, will be assessed.
 - *(Caution: intended to apply when local authority must pay a third party to search databases, etc. Should not be applied when searching through modern electronic data such as email, and other easily accessible networked data.)*

Access summarized

- Any person has a right to access records
- The Act sets out the rules to follow
 - A response must be provided within 30 calendar days
 - Fees may be charged
 - Applications may be transferred
 - Time may be extended up to 60 days
- Records may be disclosed in whole, in part or not at all depending upon the exemptions that may apply
- Information and Privacy Commissioner may review decisions upon request of applicant

Protection of Privacy

Medical records found
Information and privacy commissioner says he found boxes containing the province's information on Wednesday that he was "astonished" by the volume of health information in file folders.

Privacy Breach Class Actions
The year 2013 began with a shocking disclosure as Human Resources and Skills Development Canada ("HRSDC") admitted to the loss of a portable hard drive containing unencrypted personal and financial information, including SIN numbers and birth dates, of more than half a million people who took out student loans and 250 employees. Reports allege a two-month delay in notification to the public of the breach. Three class actions have been launched by letter and a hot-line set up to handle inquiries has reportedly received over 40,000 calls. This announcement follows the recent disclosure by HRSDC of another breach involving the loss of a USB key from an office in Quebec, containing personal information of more than 5,000 Canadians [1].

Privacy Breach Class Actions
The year 2012 saw a number of high profile breaches in the health industry resulting in losses, including costs to notify affected individuals, defence costs to respond to class actions and regulatory investigations, and in May, the Peterborough Regional Health Centre fired 7 employees who inappropriately accessed patient records [2]. In BC, the provincial government disclosed that in three instances of data breaches in October 2010 and June 2012 more than 5 million persons' personal health data had been accessed without notification of more than 38,000 individuals by letter. Furthermore, the government is dealing with costs associated with the termination of 7 employees, at least two of whom have launched separate lawsuits in response to their terminations [3].

Privacy Breach Class Actions
In one of the most high profile privacy breaches in 2011, Sony Corp. is facing at least 25 lawsuits, including class actions in Canada [4] and the U.S., over theft of personal data of more than 100 million video game users.

Privacy leaker keeps gov't job
A justice department employee who leaked private information to the Teamsters union will not lose her job. Ken Acton, assistant deputy minister with the Ministry of Justice, said an employee in his department gave her union-worker friend personal information after accessing the Crown-owned Saskatchewan Government Insurance's (SGI) database. Acton suspended the government employee without pay in March when he learned of the breach. No system is immune from human error, but people should have faith their information is private and secure, said Acton. "It's difficult to say every system operates perfectly because you've got a number of individuals that work with various pieces of information on a daily basis across government and through organizations," said Acton. "There's always that human component." Acton said the employee, whose name is not being released, has since returned to work. "The employee was remorseful," said Acton. "In hindsight she realizes that was not the [right] thing to do." "The government employee no longer has access to personal data, began receiving literature from the Teamsters union. CBC News she thought it was odd when she received a letter from the local Teamsters in Saskatoon since she never anyone from the union. She wondered how they found her press.

Privacy Breach Class Actions
We chose Grey Swan to assist us in a time sensitive claim situation and were impressed with Murray's efficient, professional manner - an approach that not only inspired confidence, but provided the strategic solution we needed. Because of Murray's years of experience, we were able to resolve our claim quickly and efficiently. Jan Kaspericki, CEO, Ontario Psychological Association

Privacy - what's it about?



- Protecting personal information
- LAFOIP has rules about:
 - Consent and authority
 - Collection, use and disclosure
 - Informing individuals about the purpose for collection
 - Accuracy
 - The right to access and request corrections
 - Giving notice to individuals about purpose
- These rules must be followed:
 - when responding to access requests
 - when releasing records informally
 - during the normal conduct of business

Personal Information

- Personal information is defined in LAFOIP (section 23):
 - Any information about an identifiable individual:
 - e.g. race, religion, sexual orientation, family status, criminal or employment history,
 - criminal or employment history
 - information obtained on a tax return or gathered for the purpose of collecting a tax
 - description of a person's financial assets, liabilities, net worth, bank balance, financial history, etc.
 - e.g. opinions of another person about that individual
 - Exceptions:
 - classification, salary, benefits or responsibilities of an officer or employee of a local authority
 - expenses incurred traveling at the expense of the local authority
 - details of a licence, permit or other similar discretionary benefit
 - etc.



Collection and Notice

(LAFOIP Ss. 24 and 25)

- Must be for a purpose that relates to an existing or proposed program or activity
- Consent is not an authority for collection
- Limited to information reasonably necessary for the program
- Preference to collect directly from the individual, there are exceptions
- Duty to inform when collecting directly from the individual

Use and Disclosure

(LAFOIP - Ss. 26 and 27)

- With consent
- For the purpose for which it was collected or a use consistent with that purpose
- Without consent if the Act permits
- Institution based
 - walls around department/ local authority

Disclosure without consent - examples

- Subpoena or warrant
- To legal counsel
- To comply with an Act or regulation
- To protect the mental or physical health or safety of an individual
- To assist in the provision of services to the individual
- See s. 28 of the Act and s. 9 and 10 of the regulations for a complete list

Best practice advice!!

- Use or disclose only for the purpose the personal information was collected.
- If other purpose:
 - Get consent in writing, or
 - Confirm authority to disclose without consent in 28(2) of LAFOIP

Protection of Privacy

- Access to personal information & correction:
 - Individuals have a right to access records containing their own personal information (some limits) (section 30)
 - Individuals have the right to request correction to personal information (section 31)
- Accuracy of Personal Information
 - If personal information is used for administrative purpose, reasonable steps must be taken to ensure accurate and complete (s. 26)

Protection of Privacy - Other

- Ensure safeguards are in place:
 - Organizational, technological, physical
- Retention:
 - Only retain as long as necessary and in accordance with approved schedule
- Disposal:
 - Safely dispose once retention period is met
- Information and Privacy Commissioner can review privacy practices.

Safeguards – general

- Administrative:
 - Policies, codes of conduct, *Information Technology Acceptable Usage Policy*, contracts with service providers, etc.
 - Strong passwords, policies re mobile devices, etc.
- Physical:
 - Locked file rooms, restricted access areas, clean desk, etc.
- Technical:
 - Firewalls, encryption, etc.

Privacy - summary

- Local authorities must:
 - Have authority to collect personal information
 - Inform individuals of the purpose for collection
 - Limit collection to what is necessary
 - Use or disclose only for the purpose collected or where allowed by the Act
 - Ensure accuracy
 - Provide access by individuals
 - Respect the right of correction
- To achieve:
 - information must be managed and protected

A Coordinated Approach



Access and Privacy Branch

Telephone: 787.5473

Email: accessprivacyjustice@gov.sk.ca

Examples of resources available include:

- Guidance documents and tools;
- Template letters in responding to access requests;
- Privacy Breach Management Guidelines;
- Online training:
 - Access and Privacy Training Course for Saskatchewan Executive Government:
 - <http://www.saskatchewan.ca/government/training-and-workshops/access-and-privacy-training-course-for-saskatchewan-executive-government>

Contact Information

Aaron Orban
Access and Privacy Branch
Ministry of Justice
Phone: (306) 787-6428
Email: aaron.orban@gov.sk.ca

Questions?



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