



Notice: This document is intended to provide direction to Government of Alberta departments regarding the *Freedom of Information and Protection of Privacy (FOIP) Act*. Other public bodies may find this information helpful when developing their own FOIP policies, guidelines or processes. This information does not constitute legal advice.

Access to Manuals and Guidelines

CONTENTS

Introduction	1
Interpretation of section 89	1
Manuals, handbooks and guidelines	2
Facilities	3
Severing information in guidelines	3
Managing access to guidelines in a public body	4
Identifying guidelines to be made available	4
Reviewing guidelines	4
Print or electronic format	4
Providing access at a facility	5
Providing access in other ways	5

INTRODUCTION

The *Freedom of Information and Protection of Privacy Act* (the FOIP Act) requires every public body to provide facilities for the public to inspect any manual, handbook or other guideline used in decision-making that affects the public.

The principle underpinning this provision is one of open government. Providing access to documentation that guides decision-making allows for public scrutiny of the decisions of public bodies. Providing access to this material also allows members of the public to better understand decisions that affect them.

This Bulletin explains **section 89** of the FOIP Act, which establishes the requirements for providing access to manuals, handbooks and guidelines. The Bulletin offers guidance on the interpretation of **section 89** and practical advice on managing access to manuals and guidelines in a public body.

Publications produced by Access and Privacy, Service Alberta, cited in this Bulletin are available on the FOIP website at foip.alberta.ca. Decisions, practice notes and publications issued by the Office of the Information and Privacy Commissioner of Alberta may be found on the OIPC website at www.oipc.ab.ca.

INTERPRETATION OF SECTION 89

The provision of the Act that addresses access to manuals and guidelines reads:

89(1) The head of every public body must provide facilities at

- (a) the headquarters of the public body; and
- (b) any offices of the public body that, in the opinion of the head, are reasonably practical,

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

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

Manuals, handbooks and guidelines

Section 89 applies to any “manual, handbook or other guideline” used in decision-making processes that affect the public. The documentation need not carry the title “manual,” “handbook” or “guideline.” The provision allows for *other* guidelines. Other guidelines may be called policies, directives, procedures, or interpretation bulletins, for example. They may also include training materials if the training materials set the standards for decision-making that affects the public.

They may be stand-alone documents or they may be part of larger documents. They may be in print or in one of a range of electronic formats, such as databases that can be queried and files of Frequently Asked Questions (FAQs). In some cases guidelines may be in a video format.

In the case of a new program of a public body, formal documentation may not have been developed and the guidelines may be in an interim form, such as a circular or a decision memorandum.

The criteria for what must be made available are that the documentation is used

- in a decision-making process that affects the public,
- by employees of the public body in administering or carrying out programs or activities of the public body.

A decision-making process that “affects the public” means a process that determines how a public body’s programs and services will be delivered to the public in general or the segment of the public that the public

body is intended to serve or to regulate. Examples of decision-making processes include

- assessing or verifying eligibility for a program,
- calculating a fee,
- awarding a contract in a tendering business,
- applying standards in tests or inspections,
- deciding to use a law enforcement measure that carries a risk of harm.

Section 89 does not apply to guidelines for procedures that do not involve decision-making, such as manuals and guidelines for administrative support staff who perform clerical functions relating to an application process. Nor does this section apply to technical documentation for machines or equipment, even if these may be used in support of a decision-making process.

Manuals and guidelines that do not affect the public are also not within the scope of **section 89**. For example, a public body is not required to make internal administrative guidelines available under this process.

Some examples of manuals and guidelines that affect the public are:

- manuals used extensively throughout Alberta by Occupational Health and Safety officers, such as the *Alberta Asbestos Abatement Manual* (available online)
- the University of Calgary’s *General Faculties Council Handbook* (available online)

Section 89 applies to manuals and guidelines used by “employees” of the public body in administering programs or activities of the public body. The FOIP Act defines an employee as 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 (**section 1(e)**). This means that where a contractor, for example, provides a service on behalf of a public body, the manuals and guidelines relating to that service must be available under **section 89**.

Facilities

A public body must provide “facilities” where the public may inspect the documentation. Facilities must be provided at the headquarters of the public body, and, to the extent practicable, other offices of the public body. A decision as to what is “practicable” is based on what can be done in the circumstances, what it is possible to do, not factors such as demand from the public.

The “facility” may, in some larger public bodies, be a purpose-designed centre. For example, a public body’s facility may be a departmental library or information resource centre where the documentation is stored and may be accessed by the public.

More commonly, the facility will be a space set aside in a reception area, an office in the area of the FOIP Coordinator or a program contact, or a workstation equipped to provide access to the material.

SEVERING INFORMATION IN GUIDELINES

Section 89 does not provide an unqualified right of access to information about a public body’s decision-making processes. **Section 89(2)** allows a public body to remove, or “sever,” information that the public body would be authorized or required to refuse to disclose if the public body received a request under **Part 1** of the Act.

A public body may, for example, be authorized to remove information if disclosure of the information could reasonably be expected to

- interfere with public safety (**section 18(1)(b)**),
- harm the effectiveness of procedures used in law enforcement (**section 20(1)(c)**),
- reveal any information relating to the exercise of prosecutorial discretion (**section 20(1)(g)**), or
- prejudice the use or results of particular tests or audits (**section 26**).

A public body may not sever information that falls within the exception for advice from officials (**section 24(1)**) if the information is an instruction or guideline issued to the officers or employees of a public body (**section 24(2)(f)**).

In *Order F2002-023*, the Adjudicator found that Alberta Human Resources and Employment was not required to disclose a program policy manual in response to a request under **Part 1** of the FOIP Act. The Act’s exception to disclosure for information that is available to the public applied to the manual, since the manual was available for purchase (**section 29(1)(a)**). Also, the department met the requirements of **section 89** of the Act when it informed the applicant how to obtain access to the manual.

In *Order 2000-017*, the Information and Privacy Commissioner found that the City of Edmonton was not required to disclose photo-radar operating manuals in response to a request under **Part 1** of the FOIP Act. The information was found to be confidential business information of a third party. Although this case concerned a request under **Part 1** and not access under **section 89**, the fact that the information could be withheld under **section 16(1)(b)** of the FOIP Act means that the public body would not be required to provide access to the manuals under **section 89**.

In *Order 2007-005*, another decision regarding a request under **Part 1**, the Adjudicator found that a police service was not required to disclose information in a training video used in the police service’s canine unit. The Adjudicator agreed with the police service that the unit could become less effective in apprehending suspects if certain information in the video was disclosed to the public, and that disclosure could hamper the control of crime (**section 20(1)(k)**). Although **section 89** was not at issue in this case, it could be inferred from the Order that the police service would also not be required to provide access to the training video under **section 89**.

Where a public body decides to sever information from a guideline, the public body should record the exception to disclosure that applies to the information.

It is a good practice to record the applicable provision of the FOIP Act in the text itself or in an attachment to the document. The need to document the application of exceptions applies to both paper and electronic documentation.

It must be brought to the attention of the person inspecting the guideline that information has been severed. It would be contrary to the intent of **section 89** to fail to disclose that information in a guideline had been removed.

MANAGING ACCESS TO GUIDELINES IN A PUBLIC BODY

Manuals, handbooks and other guidelines are a vital element in program administration. It is therefore particularly important for the FOIP Coordinator to have program contacts who can assist with making this documentation available to the public.

The FOIP Coordinator's office and the program area should establish roles and responsibilities for all aspects of the process and mechanisms to coordinate different activities. This information should be communicated to all officials and employees involved in creating manuals and guidelines.

Identifying guidelines to be made available

The FOIP Coordinator should work with program areas within the public body to identify manuals, handbooks and other guidelines to which **section 89** applies. It may be helpful to plan to update the inventory at a regular time each year.

For an example of an inventory of guidelines, see the University of Alberta's UAPPOL, which is both a list and a central publication location for University policies and procedures. UAPPOL is publicly on the University's public website.

The FOIP Coordinator should have a process for receiving notice about guidelines that need to be added or deleted from the inventory of current guidelines. The Coordinator should also have a process for receiving notice of content updates or a process for ensuring, at the time access is given, that a guideline that is to be provided to the public is in fact current.

A public body may find it helpful to retain some non-current versions of guidelines to respond to requests that relate to decision-making processes in the recent past. Where a program is superseded but remains active for some current clients, guidelines relating to the program should be retained until those clients have completed the program. For example, an educational body may be operating two programs concurrently until students of the older program have graduated from that program.

Reviewing guidelines

The FOIP Coordinator should review the guidelines in consultation with the program area to determine whether there is a need for severing under **section 89(2)**.

As a practical matter, a public body that makes a severed guideline available in an electronic format should be cautious about electronic methods of suppressing text that allow the suppressed information to be retrieved (e.g. the use of hidden text or tracked changes in a Word document).

When information is severed to create a public version of a manual, both the operational and public versions have to be managed.

Print or electronic format

A public body must provide copies of its manuals and guidelines at the public body's facilities, but may offer these materials in paper or electronic format or both formats. The program area is likely to be able to advise on the preferences of its clientele.

It should be noted that **section 89** only requires a public body to allow the public to "inspect" any manuals and guidelines. Public bodies are not required to provide copies under this process. However, a public body that is willing to make paper copies for a member of the public, or to allow a member of the public to make an electronic copy, may want to take ease of copying into consideration when deciding how to make manuals and guidelines available.

A public body may also want to take into consideration how the format will affect the

management of multiple copies, especially if these are distributed across multiple facilities. It is likely to be easier to distribute a new electronic version than to keep multiple paper copies current. If it is decided to make paper rather than electronic copies available to the public, consideration may need to be given to keeping just one or two full sets of the materials at one facility, and sending the needed material by courier to other locations for viewing by a member of the public.

Providing access at a facility

The FOIP Coordinator needs to obtain a decision of the head of the public body (or delegate) as to what facilities will be made available at the headquarters and other offices of the public body. The public body should have arrangements in place so as to be able to respond to an inquiry in a timely way. The following information about the facility or facilities should be readily available:

- location,
- hours of operation,
- assistance available,
- any copying arrangements, and
- availability of access to online manuals or Internet services.

The Act does not require public bodies to address special needs of the public. However, a public body may choose to provide access to manuals and guidelines in a manner that meets the needs of its clientele. Where appropriate, a public body might consider

- making a paper copy available for individuals who do not wish to view the documentation in electronic form (or vice versa);
- making large-print copies available or offering technology supports, such as large computer screens or software, for the visually handicapped;
- providing a translation (or summary) of documentation in high demand among a non-English-speaking segment of the public.

These measures are not required under the FOIP Act and a decision to put these or other measures in place to assist clients is entirely at the discretion of the public body. An individual would have no right to complain to the Information and Privacy Commissioner if any of these services was not provided.

Providing access in other ways

Members of the public may find other ways of accessing manuals and guidelines more convenient than coming to a public body's facility. A public body may choose to make information about its decision-making processes available to the public in other ways.

If a public body makes its manuals and guidelines available to the public in these other ways, the public body is not required to provide access to those manuals and guidelines at a facility in its headquarters and offices. A public body is not required to provide access to information

- that is readily available to the public,
- that is available for purchase by the public, or
- that is to be published or released to the public within 60 days (**section 29(1)**).

The FOIP Coordinator's office should be prepared to describe all the available options for a member of the public to access any particular manual or guideline.

Publication on a website

Some public bodies provide access to manuals on the web, in "virtual reading rooms." Providing online access has a number of advantages:

- information is publicly available,
- one copy serves many users,
- records can be accessed 24/7,
- a user may access the site from more than one location, and
- websites can support formats that are accessible to all users, including visually handicapped users.

It should be remembered that online publications may not be accessible to all members of the public.

Where a public body does not make its manuals and guidelines available online, it may be helpful to post a notice on the public body's website detailing the location and contact information for the facilities where the materials can be viewed.

Print or electronic publication for purchase

In cases where a public body has a large public, it may be worthwhile to publish manuals, handbooks and other guidelines and make them available for purchase. The Alberta Queen's Printer publishes a number of manuals for the Government of Alberta, including the *FOIP Guidelines and Practices* manual produced by Access and Privacy, Service Alberta.

Public libraries

Public libraries can enhance the accessibility of manuals of public bodies. Local libraries generally have the advantage of being more conveniently located for the public than the offices of public bodies and of being accessible outside business hours.

Public libraries generally offer free Internet access to information that has been made publicly available, and they also often have enhanced technology to help persons with disabilities review print and electronic documents.

Public bodies might consider the benefits of coordinating with public libraries to improve public access to manuals, or directing members of the public to these repositories, where possible.

Depository libraries

Government of Alberta publications are available at depository libraries throughout the province. If a manual, handbook or other guideline has been published, it will be included in the depository library program. Government publications are sent directly from departmental libraries and ministries to each full Depository Library on a monthly basis.

Examples of Depository Libraries in Alberta include the Calgary Public Library, the Legislature Library of Alberta and the Provincial Archives of Alberta. A current list of Depository Libraries is available on the Alberta Queen's Printer website at www.qp.gov.ab.ca.

Currency

This Bulletin takes into consideration decisions issued by the Office of the Information and Privacy Commissioner of Alberta up to December 31, 2008.

Purpose

FOIP Bulletins are intended to provide FOIP Coordinators with more detailed information for interpreting the *Freedom of Information and Protection of Privacy Act*. They supply information concerning procedures and practices to assist in the effective and consistent implementation of the FOIP Act across public bodies. FOIP Bulletins are not a substitute for legal advice.

Further Information

FOIP Strategic Services
Service Alberta
3rd Fl., 10155 – 102 Street
Edmonton, Alberta T5J 4L4
Phone: 780-427-5848
Website: foip.alberta.ca