



## FOIP Amendment Act, 2003

### Introduction

On November 28, 2001, the Legislative Assembly of Alberta appointed an all-party Select Special Committee to review the *Freedom of Information and Protection of Privacy Act* (the *FOIP Act*), as required under **section 97** of the *Act*. The Committee submitted its Final Report in November 2002 ([www.assembly.ab.ca/pro/committees/FOIP\\_Final\\_Report.pdf](http://www.assembly.ab.ca/pro/committees/FOIP_Final_Report.pdf)). The Report included twenty-six recommendations involving amendments to the *FOIP Act*.

The *FOIP Amendment Act, 2003* received royal assent on May 16, 2003. The *Act* came into force on royal assent, with the exception of the amendment creating **Division 1.1** of **Part 5 (sections 74.1 to 74.91)** and an amendment to section 8(2) of the *Traffic Safety Act*, both of which come into force on proclamation.

The purpose of this Bulletin is to provide a comprehensive list of the amendments to the *FOIP Act* and to offer some guidance on interpreting the new and amended provisions.

The Bulletin also includes a brief account of several amendments to other Acts that appear as consequential amendments in the *FOIP Amendment Act*.

A more detailed explanation of the rationale for each of the amendments is contained in the Committee's Final Report. A chart comparing the wording of the amended provisions with the new wording is available on the FOIP Web site ([www3.gov.ab.ca/foip/legislation/pdf/concordance\\_jan2002\\_jun2003.pdf](http://www3.gov.ab.ca/foip/legislation/pdf/concordance_jan2002_jun2003.pdf)).

### Amendments to the FOIP Act

Amendments to the *FOIP Act* are discussed in the approximate order in which they appear in the amended Act. Underlining has been used to highlight the changes.

### Definitions

#### ■ Section 1: Definitions (Recommendation 27)

The *FOIP Act* defines "personal information" generally as "recorded information about an identifiable individual." The definition also provides an illustrative list of types of personal information. **Section 1(n)(v)** has been amended to read "the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics."

In addition, a definition of "biometric information" has been added to **section 1**: "biometric information" means information derived from an individual's unique measurable characteristics" (**section 1(b.1)**).

#### In this issue...

Introduction	1
Amendments to the <i>FOIP Act</i>	1
Definitions	1
Records to which the <i>Act</i> applies	2
Part 1: Freedom of Information	3
Part 2: Protection of Privacy	5
Part 3: Disclosure of Information in Archives	6
Part 4: Office and Powers of the Information and Privacy Commissioner	6
Part 5: Reviews and Complaints	7
Part 6: General Provisions	7
Amendments to Other Acts	10

Examples of biometric technologies include fingerprinting, facial recognition, voice recognition, and iris and retinal scans. Applications of biometric technology include law enforcement, fraud prevention, computer network security, and physical access.

This amendment does not mean that a public body may not use biometric technologies for identification purposes. As with other types of personal information, the collection of biometric information must be authorized under **section 33** of the *Act*, and public bodies may use and disclose this information only as authorized and only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner (**sections 39(4) and 40(4)**).

The Committee recommended the addition of “genetic information” to **section 1(n)(v)**, despite the fact that it may already be included in the term “inheritable characteristics,” to clarify that the *FOIP Act* applies to an individual’s DNA information. The *Act*’s definition of a “record” (**section 1(q)**) limits the application of this provision to *recorded information* about a DNA specimen.

It should be noted that matters concerning ownership of DNA, the collection of DNA under the federal *DNA Identification Act* and the use of DNA in a commercial context (e.g. by insurance companies) are outside the scope of the *FOIP Act*.

### **Records to which the Act applies**

**Section 4(1)** provides that the *FOIP Act* applies to all records in the custody or under the control of a public body, except records specified in this section.

#### ■ **Section 4(1)(l)(vi): Vital Statistics registry** (Recommendation 6)

The exclusion in **section 4(1)(l)(vi)** has been amended to refer to records made from information “in an office of the Director, or of a district registrar, as defined in the *Vital Statistics Act*.” This amendment codifies the Information and Privacy Commissioner’s interpretation (*IPC Order 2001-014*) that the term “office” includes persons other than the district registrar performing duties associated with the office.

This amendment clarifies that the *FOIP Act* does not apply to a record made from information in an office

of the Director *or* a district registrar as defined in the *Vital Statistics Act*.

#### ■ **Section 4(1)(l)(vii): Other registries** (Recommendation 7)

The exclusion in **section 4(1)(l)(vii)** has been amended to refer to records made from information “in 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.” This amendment codifies the Information and Privacy Commissioner’s interpretation of the term “registry” in *IPC Order 2001-029*.

A registry is excluded from the scope of the *FOIP Act* only if both conditions are present. The registry must

- be authorized or recognized by an Act or a regulation, *and*
- it must be established by law or practice that the registry is accessible to the public.

#### ■ **Section 4(1)(n): Records of members of the governing body of a local public body** (Recommendation 10)

**Section 4(1)(n)** has been amended to exclude from the scope of the *Act* “a personal record of an appointed or elected member of the governing body of a local public body.” This amendment is intended to provide for a consistent approach to the personal records of all members of the governing bodies of local public bodies, whether they are appointed or elected.

For example, an academic staff member who is elected to the Academic Council of a multi-campus college may be provided with work space on the campus where the Academic Council meets. If the staff member keeps personal records unrelated to the mandate or functions of the Academic Council, these personal records are not subject to the *Act*. These might include:

- records of personal or family appointments or events,
- records related to a community organization or non-profit group to which the individual belongs on a personal basis and not as a representative of the college, or
- records related to a professional association in which the individual holds office.

This exclusion does *not* apply to personal information in records related to the mandate and functions of the governing body of the public body. It also does not apply to personal information in records related to a member in his or her capacity as an employee of the public body.

The exclusion applies only to local public bodies. It does not apply to personal records of a member of the governing body of a public body listed in Schedule 1 of the FOIP Regulation.

For further information on what constitutes a “personal record” in this context, see Bulletin Number 6: “Records of Elected and Appointed Officials of Local Public Bodies,” published by Information Management, Access and Privacy, Alberta Government Services ([www3.gov.ab.ca/foip/guidelines\\_practices/bulletins/bulletin6.cfm](http://www3.gov.ab.ca/foip/guidelines_practices/bulletins/bulletin6.cfm)).

## Part 1: Freedom of Information

### ■ Section 16(3)(c): Disclosure harmful to business interests of a third party (Recommendation 18)

The *FOIP Act* requires a public body to refuse to disclose information to an applicant if disclosure would be harmful to the business interests of a third party. This mandatory exception does not apply under certain circumstances, including if the information relates to a non-arm’s length transaction between the Government of Alberta and another party (**section 16(3)(c)**).

**Section 16(3)(c)** has been amended to apply if “the information relates to a non-arm’s length transaction between a public body and another party.” An agency, board or commission designated as a public body in Schedule 1 of the FOIP Regulation or a local public body may not refuse to disclose confidential business information of a third party if that information relates to a non-arm’s length transaction with the public body.

A “non-arm’s length transaction” in this context is a transaction in which one of the parties may have sufficient leverage or influence to exercise control or pressure on the free will of the other (see *IPC Order 98-013*).

### ■ Section 17(2)(a): Disclosure harmful to personal privacy: manner of consent (Recommendation 29)

**Section 17(2)** states that a disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy under certain circumstances. One of these is if the third party has consented to or requested the disclosure. As amended, **section 17(2)(a)** no longer requires the consent to or request for disclosure to be “in writing” but instead, “in the prescribed manner.” This means that the requirements for valid consent can be set out in the regulations under the *FOIP Act*. **Section 94(1)(l)**, which allows Cabinet to make regulations respecting the manner of giving consent, has been amended to include **section 17(2)(a)**.

**Section 6** of the FOIP Regulation sets out the requirements for consent in relation to **sections 39(1)(b) and 40(1)(d)**. When the *FOIP Amendment Act* came into force on May 16, 2003, this consent provision did not apply to **section 17(2)(a)**. However, an amendment to the Regulation has been proposed to state that consent under **section 17(2)(a)** must be “in writing.”

It is expected that the regulation will also be amended to allow for other forms of consent, including oral consent, and to establish standards for the authentication of identity applicable to the specific form of consent.

This consent provision in the Regulation applies only with respect to **sections 17(2)(a), 39(1)(b) and 40(1)(d)**. The *Act*’s provision for third party notice continues to require that, if a third party provides consent to the disclosure of personal information, it must be “in writing” (**section 30(4)(c)**).

### ■ Section 17(2)(b): Disclosure harmful to personal privacy: form of notice (Recommendation 14)

**Section 17(2)(b)** requires notice of a disclosure of personal information in compelling circumstances affecting anyone’s health or safety. This provision has been amended to eliminate the requirement to provide notice by mail. Instead it is required simply that “written notice of the disclosure is given to the third party.” The amendment makes **section 17(2)(b)** consistent with other provisions of the *Act* that have notice requirements.

**Section 83** now applies to all notices given under the *Act*, which means that a notice may be given either by mail or by other specified methods. See the discussion of **section 83**, as amended, below.

■ **Section 17(2)(d): Disclosure harmful to personal privacy: disclosure for research purposes**

(Recommendation 19)

**Section 17(2)(d)** has been repealed. This provision allowed for disclosure in response to a FOIP request if the disclosure was for research purposes and in accordance with the *Act*'s provisions for disclosure for research or statistical purposes (**section 42**) or disclosure by archives (**section 43**).

All disclosures of personal information in accordance with **section 42** or **section 43** should be dealt with under Part 2 of the *Act*, not within the FOIP request process under **Part 1**.

■ **Section 17(2)(j)(ii): Disclosure harmful to personal privacy: health facility admission**

(Recommendation 20)

**Section 17(2)(j)(ii)** has been repealed. This provision allowed a public body to disclose, under certain circumstances, the information that an individual had been admitted to a health care facility.

The proclamation of the *Health Information Act (HIA)* in 2001 made this provision unnecessary, since the *HIA* deals with the disclosure of this information by public bodies that are "custodians" under the *HIA*, such as hospitals and other health-care facilities.

Public bodies that are not custodians under the *HIA* may continue to disclose personal information so that the spouse, relative or friend of an injured, ill or deceased individual may be contacted (**section 40(1)(s)**). As of June 1, 2003, the adult interdependent partner of an injured, ill or deceased individual was added to this list.

■ **Section 17(4)(e.1): Disclosure harmful to personal privacy: bank account and credit card information**

(Recommendation 21)

**Section 17(4)(e.1)** is a new provision stating a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if "the personal information consists of an individual's bank account information or credit card information."

Although the *Act*'s definition of personal information includes information about an individual's financial history (**section 1(n)(vii)**), **section 17(4)** did not expressly refer to individual financial information. This new provision is intended to address Albertans' concerns about the handling of electronic credit transactions.

**Section 17(4)(e.1)** refers expressly to bank account and credit card information. Other information about an individual's financial history, such as assets, liabilities and credit history, already falls within the definition of personal information and disclosure would be subject to the unreasonable invasion of privacy test.

The amendment continues to require the head of a public body to consider all the relevant circumstances, including whether disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny (**section 17(5)(a)**) (e.g. in a case where an individual has conducted a financial transaction on behalf of a public body).

■ **Section 29: Information available to the public**

(Recommendation 23)

**Section 29** allows the head of a public body to refuse to disclose information that is available for purchase by the public or that is to be published or released to the public within sixty days after receiving an applicant's request.

As amended, **section 29** also allows the head of a public body to refuse to disclose to an applicant information "that is readily available to the public" (**section 29(1)(a)**) including information that is available to the public through a Web site, in a public library or in a public directory.

The former **section 29(1)(a)**, the exception for information that is available for purchase by the public, is renumbered **section 29(1)(a.1)**. Public bodies should continue to use **section 29(1)(a.1)** where there is more than a nominal cost to obtain a copy of the information.

■ **Section 30: Notifying the third party**

(Recommendation 16)

**Section 30** provides that written notice must be given to a third party when a public body is considering giving access to that third party's personal

information or business information. **Section 30(1)** has been amended and **section 30(1.1)** has been added to clarify that third party notice is not required if **section 29** is applicable to the information – i.e. if the information is readily available to the public, is available for purchase, or is to be published within 60 days of the request.

■ **Section 32: Disclosure in the public interest**  
(Recommendation 14)

**Section 32** requires a public body to disclose, without delay,

- information about a risk of significant harm to the environment or to health or safety, or
- information the disclosure of which is clearly in the public interest.

If it is not practicable to notify a third party prior to the disclosure, **section 32(4)**, as amended, requires the public body to “give written notice of the disclosure.” The amendment makes **section 32(4)** consistent with other provisions of the *Act* that have notice requirements.

**Section 83** now applies to all notices given under the *Act*, which means that a notice may be given either by mail or by other specified methods. See the discussion of **section 83**, as amended, below.

## **Part 2: Protection of Privacy**

■ **Sections 36, 37: Request for correction of personal information**  
(Recommendation 28)

**Sections 36(1) and 37(2)(a)** have been amended to replace the reference to an “applicant” with wording that refers to an “individual.” This amendment was made because **section 1(b)** of the *Act* defines “applicant” to mean a person who makes a request for access to a record under **section 7(1)** and not a person who makes a request for correction of personal information under **section 36**.

The technical amendment clarifies that a request for access is not a necessary first step before an individual may request a correction to his or her own personal information.

■ **Section 40(1)(bb.1): Disclosure of personal information: business contact information**  
(Recommendation 30)

**Part 2** of the *FOIP Act* permits a public body to disclose personal information only under specified circumstances, including if the disclosure would not be an unreasonable invasion of personal privacy under **section 17**.

A new provision has been added to **section 40(1)** stating that a public body may disclose personal information

- (bb.1)** if the personal information is information of a type routinely disclosed in a business or professional context and the disclosure
- (i) is limited to an individual’s name and business contact information, including business title, address, telephone number, facsimile number and e-mail address, and
  - (ii) does not reveal other personal information about the individual or personal information about another individual.

This new provision permits, but does not require, public bodies to disclose the names and business contact information (including e-mail address) if doing so would not reveal other personal information.

For example, a public body may

- publish an employee directory on its Web site,
- distribute a list of consultants providing professional services in the public body’s area of operations, e.g. at the request of another public body or a business,
- provide a list of participants in a consultation process involving a public body’s business stakeholders, or
- provide a list of e-mail addresses of a public body’s contractors and business partners to an IT service provider offering coordinated e-mail service to several public bodies.

**Section 40(1)(bb.1)** will be considered in detail in Bulletin Number 15: “Business Contact Information,” to be published by Information Management, Access and Privacy, Alberta Government Services.

■ **Section 40(2), (3): Disclosure of personal information: technical amendments**

**Section 40(2) and (3)** have been amended to add the phrase “Notwithstanding subsection (1).” This technical amendment resolves a possible conflict with section 40(1).

**Part 3: Disclosure of Information in Archives**

■ **Section 43(1)(a): Disclosure of information in archives**

(Recommendation 34)

**Section 43(1)(a)** permits the Provincial Archives of Alberta and the archives of a public body to disclose personal information under different circumstances depending on the age of the record. **Section 43(1)(a)** has been amended to delete the former reference to disclosure for research purposes and to refer to “personal information in a record.”

Subject to the conditions set out in **section 43(1)**, the Provincial Archives of Alberta and the archives of a public body may disclose information not only for research purposes but for any purpose. In accordance with standard archival practice, this amendment clarifies that references to time periods are based upon the date of the *record*, not the date of the *information* in the record.

**Section 43(1)(b)** has been amended to delete the provision stating that information other than personal information may be disclosed if access to the information is not restricted or prohibited by another Act of Alberta or Canada. The relationship of the *FOIP Act* to other Acts is set out in **section 5** of the *FOIP Act*. **Section 5** establishes that the *FOIP Act* prevails over any other provincial legislation unless there is an express provision to the contrary, either in another Act or in the FOIP Regulation. The relationship between federal and provincial legislation is determined by constitutional law.

Archives may now disclose information under **section 43(1)(b)** as long as the information is not subject to a confidentiality provision of either

- an enactment of Alberta that is paramount over the *FOIP Act*, or
- an enactment of Canada that is paramount over the *FOIP Act* (by virtue of federal paramountcy).

For further information on paramountcy, including the paramountcy of federal legislation, see Bulletin Number 11: “Paramountcy,” published by Information Management, Access and Privacy, Alberta Government Services ([www3.gov.ab.ca/foip/guidelines\\_practices/bulletins/bulletin11.cfm](http://www3.gov.ab.ca/foip/guidelines_practices/bulletins/bulletin11.cfm)).

■ **Section 43(2): Disclosure of information in the archives of a post-secondary educational body**

(Recommendation 35)

**Section 43(2)**, which allowed the archives of a post-secondary educational body to disclose information under a confidentiality agreement, has been deleted. **Section 43(1)** is now the only provision for archives and applies to all public body archives.

Any public body may disclose personal information for a research purpose under **section 42** of the *Act*. With respect to information other than personal information, the *Act* does not expressly prohibit disclosure for a research purpose under a confidentiality agreement. However, any public body contemplating such an agreement should seek legal advice as to whether disclosure of such information (e.g. confidential business information of a third party) may expose the public body to the risk of legal action.

**Part 4: Office and Powers of Information and Privacy Commissioner**

■ **Section 46: Commissioner’s term of office**

**Section 46(1)** has been amended to state that “the Commissioner holds office for a term not exceeding five years” (instead of the previously fixed term of five years).

■ **Section 56: Powers of Commissioner in conducting investigations or inquiries**

**Section 56(1)** is amended to correspond with the new **section 74.5** (discussed later in this Bulletin under Part 5: Reviews and Complaints). This amendment provides the Commissioner with the same powers under the *Public Inquiries Act* in conducting a review of a decision of the Registrar of Motor Vehicles as he has in conducting other reviews and investigations under the *FOIP Act*.

■ **Section 70: Refusal to conduct an inquiry**  
(Recommendation 37)

**Section 70** allows for exceptions to the *Act's* provision that, if a matter that is subject to a request for review is not resolved through mediation, the Commissioner *must* conduct an inquiry. The original provision in the *Act* allows the Commissioner to refuse to conduct an inquiry if the subject-matter of the request has been dealt with in an order or investigation report of the Commissioner (previously **section 70**, now **section 70(a)**). The *FOIP Amendment Act* adds a new provision, **section 70(b)**, allowing the Commissioner to refuse to conduct an inquiry if the circumstances warrant.

Consideration might be given to refusing to conduct an inquiry if the Commissioner were satisfied that

- the matter could more appropriately be dealt with by means of a procedure under another law,
- an inquiry would not result in any useful remedy (e.g. because a public body has already disclosed all available records in response to a FOIP request), or
- a request for review is frivolous, vexatious or made in bad faith.

A person who believes that the Commissioner has improperly refused to conduct an inquiry may apply to the Court of Queen's Bench for judicial review of the Commissioner's decision.

### **Part 5: Reviews and Complaints**

■ **Part 5, Division 1.1: Review of Decisions of the Registrar of Motor Vehicle Services**  
(Recommendation 4)

The addition of **Division 1.1 (sections 74.1 to 74.91)** to the *FOIP Act* will allow the Commissioner to review a decision of the Registrar to determine whether the decision is in accordance with criteria established in Traffic Safety legislation.

The Access to Motor Vehicle Information Regulation under section 8 of the *Traffic Safety Act* was approved on May 20, 2003 (O.C. 248/2003). Section 2 of the Regulation, which sets out the criteria for release of personal driving and motor vehicle information, comes into force on May 1, 2004. It is expected that **Division 1.1** will also come into force in May 2004.

The Commissioner's powers of review under **Division 1.1** will be comparable to the Commissioner's powers to conduct reviews of decisions under the *FOIP Act*, including the expanded power to refuse to conduct inquiries (**section 74.6**). However, there are some significant differences; **Division 1.1** does not empower the Commissioner

- to authorize mediation,
- to conduct an investigation, or
- to provide advice or recommendations to the Registrar.

A public body that has access to personal driving and motor vehicle information in the motor vehicle registry will likely continue to be able to obtain the information under section 2(e) of the Access to Motor Vehicle Information Regulation. This provision permits disclosure to an officer or employee of a public body or to a member of the Executive Council if the information is necessary for the performance of the duties of the officer, employee or member or if the disclosure is necessary for the delivery of a program or service. Other provisions permitting disclosure to a public body may also apply.

### **Part 6: General Provisions**

■ **Section 83: Manner of giving notice**  
(Recommendation 15)

**Section 83** has been amended to make it clear that documents and notices under the *FOIP Act* may be transmitted electronically (e.g. by e-mail) but only if the party concerned has given consent to the use of electronic means. The amendment does not require a person to provide or accept information in electronic form unless the person has consented to do so in accordance with section 8(2) of the *Electronic Transactions Act (ETA)*. Consent may be inferred from a person's conduct if there are reasonable grounds to believe that the consent is genuine and relevant to the information (*ETA*, section 8(2)).

This amendment, together with the amendments to **sections 17(2)(a), 17(2)(b) and 32(4)**, and the proposed amendments to the regulations governing the form of consent, harmonize the *FOIP Act* with the *ETA*, which came into force on April 1, 2003.

The provision for electronic transmission does not limit a public body's obligations under the *FOIP Act*

with respect to personal privacy, rights of access to information and the protection of confidential information (*ETA*, section 3).

For example, when conducting transactions electronically, a public body must comply with the *FOIP Act*'s requirements with respect to the protection of personal information (**section 38**). Similarly, a public body that is processing a request involving confidential information must not disclose information that is subject to mandatory exceptions in the course of a notification process, e.g., by transmitting the information in an insecure manner. Further, a public body must not impair rights of access under the *FOIP Act* by limiting the manner in which an individual can obtain access to information.

The relationship between the *FOIP Act* and the *ETA* will be the subject of a future bulletin to be published by Information Management, Access and Privacy, Alberta Government Services, in consultation with Alberta Innovation and Science.

#### ■ **Section 87: Directory of public bodies** (Recommendation 38)

**Section 87**, as amended, sets out the requirements of the directory to be published by the Minister responsible for the *FOIP Act*. The directory must include the name of the public body and contact information for the FOIP Coordinator or, if the public body has no FOIP Coordinator, contact information for the head of the public body. The Minister may publish the directory in either print or electronic form.

Information Management, Access and Privacy, Alberta Government Services will coordinate the expansion of the current directory on the Government FOIP web site ([www3.gov.ab.ca/foip/coordinators/](http://www3.gov.ab.ca/foip/coordinators/)). **Schedule 1** public bodies are not currently included in this directory of contact information for public bodies and FOIP Coordinators.

#### ■ **Section 87.1: Directory of personal information banks** (Recommendation 39)

The new **section 87.1** replaces the provisions for directories of personal information banks (PIBs) previously set out mainly in **section 87** (which is repealed and replaced by **sections 87 and 87.1**).

**Section 87.1** significantly changes the requirements for all public bodies. The directory is no longer the

responsibility of the Minister of Government Services. Instead, the head of each public body is responsible for maintaining and publishing a directory of its PIBs, which may be in either printed or electronic form.

In addition, the required content of the directory of PIBs held by public bodies (which was previously more extensive for provincial government public bodies) is made the same for all public bodies.

The directory must include

- the title and location of the PIB,
- a description of the kind of personal information and the categories of individuals whose personal information is included,
- the authority for collecting the personal information in the PIB, and
- the purposes for which the personal information is collected or compiled and the purposes for which it is used or disclosed.

As a consequence of the transfer of responsibility to the head of the public body, the *Act* no longer requires the head to notify the Minister of a use or disclosure for a purpose different from that listed in the directory. **Section 87.1(3)** requires this information to be recorded, and either attached or linked to the personal information in question, and the purpose must be included in the next update to the directory.

**Section 87.1(4)** requires the head of a public body to ensure that the directory is kept as current as is practicable.

It may be expected that a reasonable time will be allowed for public bodies to comply with these new requirements.

#### ■ **Section 89(1): Access to manuals** (Recommendation 41)

The phrase “within two years after this section comes into force” has been deleted from **section 89(1)** which requires each public body to provide facilities where the public may inspect any manual, handbook or other guideline used in making decisions that affect the public.

The *FOIP Act* has been in force for all sectors for more than two years, so there is no longer any need for the two-year grace period. If the *Act* were



expanded to any other sector, time for implementation could be allowed through the proclamation process.

Ministries that are responsible for **Schedule 1** public bodies should ensure that bodies that are to be designated in **Schedule 1** are made aware of their obligations under **section 89(1)** as early as possible.

■ **Section 93: Fees**  
(Recommendation 26)

**Section 93** provides that the head of a public body may excuse an applicant from paying all or part of a fee under certain circumstances. This provision, which was previously silent as to how such requests should be made and the time limit for the public body's response, has been amended to provide clarification on these points.

The amended section 93 requires that

- a request for a fee waiver be made in writing, and
- the decision of the head of a public body be communicated in writing to the applicant within 30 days of receiving the request for a fee waiver.

This amendment means that the adjudication order of Justice T.F. McMahon (May 24, 2002), which ruled on these points, is not applicable to any action or decision with respect to the manner of communication concerning a fee waiver, or the time limit for responding to a request for a fee waiver, if the action or decision occurred on or after May 16, 2003.

■ **Section 94(1)(l): Power to make regulations: technical amendment**  
(Recommendation 29)

**Section 94(1)(l)** has been amended to allow the Lieutenant Governor in Council to make regulations respecting the manner of giving consent for the purposes of **section 17(2)(a)**. The present regulation on this matter (**section 6** of the FOIP Regulation) is not applicable to **section 17(2)(a)**.

■ **Section 94(2): Power to make regulations: deletion of bodies from Schedule 1**  
(Recommendation 1)

The definition of a "public body" to which the *FOIP Act* applies includes an agency, board, commission, corporation, office or other body designated as a public body in the regulations (**section 1(p)(ii)** of the *Act*). The criteria for designating a public body are

currently established in policy, although it has been recommended that these criteria be established in the FOIP Regulation.

**Section 94(2)** of the *Act*, which provides for the deletion of bodies from the Schedule of public bodies in the FOIP Regulation, has been amended to make the criteria for *deleting* a public body from the Schedule consistent with the criteria for *designating* a public body in **Schedule 1**.

As amended, **section 94(2)** provides that a public body may be deleted if the Commissioner is satisfied that "it is not contrary to the public interest to delete the body" and that

- (a) the body
  - (i) has been discontinued or no longer exists, or
  - (ii) has been amalgamated with another body and use of the name under which it was designated has been discontinued, or
- (b) all of the following apply:
  - (i) the Government of Alberta does not appoint a majority of members to the body or to the governing board of the body;
  - (ii) the Government of Alberta does not provide the majority of the body's continuing funding;
  - (iii) the Government of Alberta does not hold a controlling interest in the share capital of the body.

These amendments do not significantly affect current practices with respect to the updating of **Schedule 1**. Government ministries will be provided with further information regarding the criteria for the designation and deletion of bodies from **Schedule 1** of the FOIP Regulation when the Schedule is next updated.

■ **Section 97: Review of the FOIP Act**  
(Recommendation 42)

**Section 97** requires that a special Committee of the Legislative Assembly review the *FOIP Act* at a specified time and submit a report within one year.

As amended, **section 97** requires the next review of the *FOIP Act* to begin by July 1, 2010.

## Amendments to Other Acts

### ■ Election Act

(Recommendation 8)

**Section 40(1)(z)** of the *FOIP Act* permits the disclosure of personal information to the Chief Electoral Officer, but only if the information is *necessary* for the performance of his duties.

Section 13(1) of the *Election Act* requires the Chief Electoral Officer to establish a register of electors from which lists of electors may be compiled. Section 13(2) of the *Election Act* has been amended to state that the register of electors may be created and revised

- (b.1) using personal information held by a public body as defined in the *Freedom of Information and Protection of Privacy Act* if in the opinion of the Chief Electoral Officer the information is necessary for the purposes of creating or revising the register,
- (b.2) using personal information listed in public telephone directories.

Section 13(2)(b.1) authorizes the Chief Electoral Officer's use of personal information held by a public body as defined in the *FOIP Act*. It may be noted that the *FOIP Act* does *not* apply to health registration information that is subject to the *Health Information Act* (**section 4(1)(u)** of the *FOIP Act*). The *FOIP Act* also does not apply to the disclosure of personal information in the motor vehicle registry (**section 4(1)(l)(ii)**).

Section 13(2)(b.1) provides authority for a public body to disclose personal information that the Chief Electoral Officer believes is necessary to create or revise the register. This provision, in combination with **section 40(1)(z)** of the *FOIP Act*, *permits*, but does not *require*, a public body to disclose personal information requested by the Chief Electoral Officer for this purpose.

### ■ Traffic Safety Act

(Recommendation 4)

Current practices for providing access to information in the motor vehicle registry were developed prior to passage of the *Traffic Safety Act* (*TSA*). The Registrar of the motor vehicle registry provides access to personal driving and motor vehicle information under contract according to criteria established in policy.

The *FOIP Amendment Act* will amend section 8(2) of the *TSA* (this section has not been proclaimed in force) to state:

**8(2)** Neither the Registrar nor any person acting on behalf of the Registrar or providing services under this Act shall release personal driving and motor vehicle information except to the persons to whom and in the circumstances under which personal driving and motor vehicle information may be released in accordance with the regulations.

The *FOIP Amendment Act* also adds a new section 8(4) to the *TSA*, establishing the power to make regulations respecting the release of personal driving and motor vehicle information, including the criteria that the Registrar must consider when deciding whether to give access to the information. Section 8(4) of the *TSA* came into force on May 16, 2003.

The Access to Motor Vehicle Information Regulation under section 8 of the *Traffic Safety Act* was approved on May 20, 2003 (O.C. 248/2003). Section 2 of the Regulation, which sets out the criteria for release of personal driving and motor vehicle information, comes into force on May 1, 2004. Section 8(2) of the *TSA*, as amended, is likely to be proclaimed in force on or before May 1, 2004.

### 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.

Government of Alberta  
 Information Management, Access and Privacy  
 3rd Floor, 10155 – 102 Street  
 Edmonton, Alberta T5J 4L4  
 Phone: (780) 422-2657  
 Fax: (780) 427-1120  
 Web site: [www3.gov.ab.ca/foip](http://www3.gov.ab.ca/foip)