FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

FOIP Bulletin

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FOIP Amendment Act, 2006

Introduction

The *Freedom of Information and Protection of Privacy Amendment Act, 2006* makes a number of amendments to the FOIP Act that affect the process of designating public bodies, access to records held by government ministries, and the processing of certain requests. The Amendment Act also places restrictions on the disclosure of personal information to courts that do not have jurisdiction in Alberta and creates a new offence and penalty for such a disclosure that is not permitted under the FOIP Act. This penalty provision extends to public body employees and contractors acting on behalf of public bodies.

The purpose of this bulletin is to provide the rationale for the new and amended provisions and to offer guidance on applying the amended provisions within public bodies. This bulletin discusses related amendments together rather than in the order in which they appear in the Act.

Exclusion of published works collected by a library (section 4(1)(j.1))

A new exclusion has been added to the FOIP Act:

The Act does not apply to published works collected by a library of a public body in accordance with the library's acquisition of materials policy.

This exclusion will be relevant to all public bodies that have libraries.

The FOIP Act applies to all records in the custody or under the control of a public body, except as provided in **section 4(1)** of the Act. The definition of a "record" expressly includes books (**section 1(q)**).

If a public body receives an access request for a book in its library, and the library has an acquisition of materials policy, the public body must respond to the request and advise the applicant that the Act does not apply to the requested record. The public body can refer the applicant to another, more appropriate process for obtaining access to the book, such as purchasing it through a book store or borrowing it from a library.

A public body that operates a library for which there is no acquisition of materials policy can continue to rely on the existing exception to disclosure in **section 29(1)**, which states that a public body may refuse to

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disclose information

- that is readily available to the public, by purchase or otherwise, or
- that is to be published or released to the public within sixty days.

The FOIP Act is intended to support public accountability through a right of access to records and to control the manner in which a public body collects, uses and discloses personal information. The Act is intended to set high standards for public administration; it does not govern information rights in general.

Nevertheless, it has been argued that the Act needs to make libraries of public bodies responsible for protecting personal privacy in cases where libraries acquire works from non-traditional sources. New information technologies have made it possible for individuals to "publish," and for libraries to collect and make publicly available, material that would previously have been confined to archives. This typically occurs when libraries accept donations of privately published memoirs and local histories and put them into circulation.

As amended, the FOIP Act now makes it clear that neither the access nor the privacy provisions of the Act apply to published works, but only when the library has collected those publications in accordance with an acquisition of materials policy – often referred to as a "collection policy" or a "selection policy" in the library world.

Most libraries have these policies, for budgetary and other purposes. To comply with the FOIP Act, a library that collects published works containing personal information from a person other than the individual the information is about must have a policy, and act in accordance with it.

Where a library intends to collect self-published works containing third party personal information that are not otherwise available (e.g. through booksellers and other libraries) and make these works available to the public, the acquisition of materials policy should address the same matters as the privacy provisions of the FOIP Act. For example:

- whether the consent of the individual the information is about was obtained, or the individual has been dead for twenty-five years or more (which would weigh in favour of disclosure), and
- the sensitivity of the personal information, and the likelihood that the personal information is inaccurate or unreliable, or might unfairly damage a person's reputation (which would weigh against disclosure).

If a published work of historical interest is offered to a library and does not fit its acquisition of materials policy, the library may wish to advise the prospective donor to offer the work to an archival collection.

Two new partial exclusions – section 6(4)

The FOIP Amendment Act adds two new partial exclusions: one for ministerial briefings and another for records in the custody of the Chief Internal Auditor of Alberta. **These exclusions apply mainly to Government departments and public bodies affiliated with the Government of Alberta.** Each of these will be discussed individually. However, they have two important aspects in common.

First, the Amendment Act creates a new *kind* of exclusion. This partial or "hybrid" exclusion is narrower than an exclusion under **section 4** of the Act. This new exclusion applies only to the right of access; other provisions of the Act continue to apply, such as

- the provision for disclosure in the public interest (**section 32**),
- the privacy protections in **Part 2**,
- the protection for whistleblowers (**section 91**), and
- the offence and penalty provisions (**section 92**).

Second, the exclusions are time-limited.

If an applicant requests access to the records to which these exclusions apply, a public body must respond to the request and advise the applicant that the records are not available under the Act for the time period specified in the Act.

If an applicant makes a request that encompasses some records to which one of these exclusions applies, the public body's response should indicate

that some records are excluded and will not be provided.

If the applicant makes a complaint to the Information and Privacy Commissioner, the Commissioner has the jurisdiction to decide

- whether the exclusion applies to the records requested, and
- whether the records fall within the time period to which the exclusion applies.

Exclusion for ministerial briefings (section 6(4))

As amended, the FOIP Act states:

The right of access does not extend

- *to a record created solely for the purpose of briefing a member of the Executive Council in respect of assuming responsibility for a ministry* (**section 6(4)(a)**)*, or*
- *to a record created solely for the purpose of briefing a member of the Executive Council in preparation for a sitting of the Legislative Assembly* (**section 6(4)(b)**).

Within the Government of Alberta, when a Minister assumes responsibility for a ministry, the Department normally prepares a "briefing book" for the Minister. The purpose of compiling this briefing material is to allow the Minister to quickly gain an overview of the ministry's functions that will allow him or her to assume leadership of the ministry, to report on the ministry in Cabinet, and to represent its interests.

The briefing material will generally include some information that is publicly available, such as the ministry's business plan and annual report, as well as information that has been created specifically for the new Minister. Information created especially for the Minister might consist of current assessments of operations and analysis of issues affecting the ministry.

Departments generally also prepare briefing binders for the Minister in preparation for a sitting of the Legislature. The purpose of the briefing material is to update the Minister on the status of ministry initiatives and to provide information in a convenient form. This enables the Minister respond in a timely way to questions in the Legislative Assembly.

A public body is not obliged to provide access to either of these kinds of briefing binders *in their entirety*, since the record *as a whole* was created solely for the purpose of briefing the Minister for one of the purposes specified in this exclusion.

A public body is also not obliged to provide access to an individual briefing note that was created solely for briefing a new Minister or briefing a Minister for session.

However, if a person requests access to a record that was not created *solely* for the purpose of

- briefing a new Minister, or
- briefing a Minister for a sitting of the Legislative Assembly,

the Act applies and the public body must process the request. This would be the case if an applicant requested

- a briefing note created for another purpose, or
- an item in a briefing book that was not created specifically for one of the specified purposes (e.g. a copy of the ministry's business plan),

provided that there was a copy of the record in some location other than the briefing book.

Exceptions in the Act may apply in some cases to briefing material not covered by these.

These new exclusions are limited to five years. For a record created to brief a new Minister, section **6(4)(a)**

does not apply to a record described in that clause if 5 years or more has elapsed since the member of the Executive Council was appointed as the member responsible for the ministry (**section 6(5)**).

The five-year time period begins to run on the date of the Order in Council appointing the minister. Orders in Council are available on the Government of Alberta web site and on the Queen's Printer web site.

For a record created to brief a Minister for a sitting of the Legislative Assembly, **section 6(4)(b)**

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

The five-year time period begins to run on the date when the spring or fall sitting (as applicable) began. This date is a matter of public record. Dates are conveniently available by searching the *Hansard* page on the Legislative Assembly web site.

If a public body chooses to provide access to a record to which one of these exclusions applies, the public body should clearly indicate when responding to the request that the record is being provided outside the FOIP Act. The applicant has no right to request a review by the Commissioner if a public body provides access to records outside the FOIP process.

Exclusion for records in the custody of the Chief Internal Auditor (section 6(7))

As amended, the FOIP Act states:

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

The Chief Internal Auditor, Corporate Internal Audit Services, is a relatively new position within the Government of Alberta. The purpose of Corporate Internal Audit Services is to provide independent, objective assurance and advisory services to improve the effectiveness, efficiency and economy of government operations. The Chief Internal Auditor reports to the Deputy Minister for Executive Council and to an Internal Audit Committee, which includes members independent of government.

This exclusion is a more limited version of the exclusion that applies to the Auditor General (**section 4(1)(d)**). The exclusion applies only to records *relating to an audit* by the Chief Internal Auditor. Also, the exclusion applies only to records that are in the custody of the Chief Internal Auditor or *a person under his or her administration*, such as an auditor employed under contract.

In the custody of the Chief Internal Auditor means in the office of a person under the Chief Internal Auditor's administration, or in his or her possession. A record is also in the custody of the Chief Internal Auditor if it is integrated with the records related to the program of the Chief Internal Auditor.

The exclusion does not apply to records relating to an audit that are in the custody of another public body. Those records are subject to a new mandatory exception in **section 24** that is discussed below.

The exclusion in **section 6** applies to all records relating to an audit by the Chief Internal Auditor, including those *created by* the Chief Internal Auditor or by an employee or a contractor *on behalf of* the Chief Internal Auditor. The exclusion also applies to records that were *supplied to* the Chief Internal Auditor. (For a discussion on "for" meaning "on behalf of," see *IPC Order 97-007* as with reference to **section 4(1)(l)**.)

This limitation on access to records in the custody of the Chief Internal Auditor does not apply to the Auditor General of Alberta. The FOIP Act does not apply to records created by or for or in the custody of the Auditor General that relate to the exercise of his or her functions under the *Auditor General Act*. The Auditor General can review records of the Chief Internal Auditor and can disclose them in accordance with the Auditor General's powers, duties and functions under that Act.

The exclusion under **section 6** does not apply

- *if 15 years or more has elapsed since the audit to which the record relates was completed* (**section 6(8)(a)**)*, or*
- *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* (**section 6(8)(b)**).

The time limit on this exclusion expires fifteen years after

- the date of the Chief Internal Auditor's report, or
- discontinuation of the audit, either as a result of a formal decision or as a matter of fact, because no progress has been made for fifteen years or more.

Exception for records relating to an audit by the Chief Internal Auditor (section 24(2.1) and (2.2))

In addition to the limited exclusion for records relating to an audit by the Chief Internal Auditor that

are in his or her custody, the Amendment Act establishes a mandatory exception to disclosure in **section 24(2.1)** for

- *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* (**section 24(2.1)(a)**)*, or*
- *information that would reveal information about an audit by the Chief Internal Auditor of Alberta* (**section 24(2.1)(b)**).

This exception will apply mainly to Government departments and public bodies affiliated with the Government of Alberta.

Section 24(2.1)(a) requires a public body to refuse to disclose records relating to an audit by the Chief Internal Auditor that are *created by or for* the Chief Internal Auditor. This would include any record that was provided to the public body by the Chief Internal Auditor or a person acting on behalf of the Chief Internal Auditor, including

- correspondence,
- meeting notes,
- reports, and
- management letters

relating to an audit. Records created by or for the Chief Internal Auditor would not include records relating to an audit that were created by the public body at the request of the Chief Internal Auditor.

Section 24(2.1)(b) requires a public body to refuse to disclose information that would *reveal information about* an audit by the Chief Internal Auditor. This would include information that makes reference, directly or indirectly, to the audit. It may also include information compiled at the request of the Chief Internal Auditor if it refers to the audit. (See, for comparison, *IPC Order 97-010* on "information that would reveal the substance of deliberations of the Executive Council.")

An example would be information in a memo that indicates that a public body is responding to a request by the Chief Internal Auditor for records of the public body. Records that were considered in the course of an internal audit, but that do not themselves reveal information about the *audit*, would not fall within this exception to disclosure.

A public body cannot rely on this exception to refuse to disclose information about the public body's programs and services

- that was compiled for the Chief Internal Auditor,
- that was attached to correspondence between public body officials and the Chief Internal Auditor, or
- in a report that indicates changes in the operation of a program or delivery of a service,

unless that information would *reveal information about the audit*, such as information about the audit process, assessment, and recommendations.

A public body must provide other information created in the course of its regular operations about programs and services, even if the information was reviewed by the Chief Internal Auditor.

As in the case of the exclusion under **section 6**, the exception under **section 24** does not apply

- *if 15 years or more has elapsed since the audit to which the record relates was completed* (**section 24(2.2**)*, or*
- *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* (**section 24(2.2(b)**).

The time limit on this exclusion expires fifteen years after

- the date of the Chief Internal Auditor's report, or
- discontinuation of the audit, either as a result of a formal decision or as a matter of fact, because no progress has been made for fifteen years or more.

Public bodies should add **section 24(2.1)** to their delegation instruments.

Authorization to disregard a request – effect on time limits (section 55(2))

As amended, the FOIP Act states that *the processing of a request ceases when the head of a public body has requested authorization to disregard a request and*

- *if the Commissioner authorizes the head of the public body to disregard the request, does not resume;*

- *if the Commissioner does not authorize the head of the public body to disregard the request, does not resume until the Commissioner advises the head of the public body of the Commissioner's decision.*

The FOIP Act allows a public body to ask the Information and Privacy Commissioner for authorization to disregard a request under certain very limited circumstances. When considering such a request, the Commissioner has a process that enables the applicant a right of reply to the public body's argument for authorization to disregard the applicant's request. This process is outlined in *IPC Practice Note 9: Authorization to Disregard Request under Section 55*, available on the Commissioner's web site (www.oipc.ab.ca under Resources: Practice Notes and Advisories).

Previously, the time needed by the Commissioner to make a decision caused public bodies to be unable to meet legislated time lines for responding to the applicant unless they asked the Commissioner for an extension. As amended, the Act allows a public body to "stop the clock" while the Commissioner is making his decision.

The clock stops on the day on which the public body sends its request to the Office of the Information and Privacy Commissioner. If the Commissioner does not authorize the public body to disregard a request, the clock starts on the day after the Commissioner sends notification of his decision to the public body (that is, the day after the date on the notification letter).

Section 55 has a significant effect on the rights of applicants. For this reason, a public body should carefully consider the guidance provided by the Commissioner in previous decisions under **section 55** before making a request for authorization to disregard a request. See the FOIP *Guidelines and Practices* manual, Chapter 3.2, for a summary of these decisions.

Disclosure of personal information to comply with a subpoena, warrant or order issued by a court or tribunal (section 40(1)(g))

Section 40(1)(g) has been amended to state that a public body may disclose personal information for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction *in Alberta* to compel the production of information or with a rule of court *binding in Alberta* that relates to the production of information. (The italicized words have been added).

This amendment makes it clear that a public body, and anyone acting on its behalf, may disclose personal information in response to a subpoena, warrant or order of a court or tribunal, or to comply with a court rule, *only* if the court or tribunal has the power in Alberta to require the public body to disclose the information.

Courts with jurisdiction in Alberta are the Supreme Court of Canada, the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta, the Provincial Court of Alberta, as well as the Federal Courts.

The powers of other tribunals are generally established in the legislation governing the tribunal. Where a tribunal has the power to compel the production of information under legislation of Alberta or Canada, that tribunal has jurisdiction in Alberta. An example of a federal tribunal with jurisdiction in Alberta is the Canadian Radio-Television and Telecommunications Commission.

A court or tribunal of another country or of a province or territory of Canada other than Alberta does not have jurisdiction in Alberta. However, an order of such a court or tribunal may be enforceable in Alberta under

- legislation of Alberta that provides for the reciprocal enforcement of orders, and/or
- a court procedure that makes an order filed with a court in Alberta enforceable as an order of the Alberta court.

For example, Alberta's *Interprovincial Subpoena Act* requires the Court of Queen's Bench to receive and adopt as an order of that Court a subpoena from a

court outside Alberta, under conditions specified in the Act. The Act also establishes a process to allow for a subpoena from a tribunal of another province to be received and adopted by the Court of Queen's Bench.

If a public body is in any doubt as to

- whether a subpoena, warrant or order of a court or tribunal is enforceable in Alberta, and
- what provision of the FOIP Act permits disclosure of personal information in response to the subpoena, warrant or order,

the public body should seek legal advice.

Unauthorized disclosure to courts without jurisdiction in Alberta

This amendment addresses situations where a contractor providing services for or on behalf of a public body holds personal information relating to the services and a foreign court issues an order for production of that information. This situation may arise where

- the information is in or accessible from a foreign location,
- the contractor is subject to the laws of the foreign jurisdiction, or
- the contractor is affiliated with an organization that is subject to the laws of the foreign jurisdiction.

Whether or not the order relating to the information is binding on the contractor will depend on the rules relating to conflict of laws.

The FOIP Act has also been amended to establish offence and penalty provisions for disclosure in response to a subpoena, warrant or order if

- the disclosure is not permitted under **section 40(1)(g)**, *and*
- no other provision of the FOIP Act permits disclosure.

The offence and penalty provisions are discussed below.

Contractual measures to prevent unauthorized disclosure

Public bodies should address demands for information by courts in their contracts. A public body's contract with a principal contractor should also require the contractor to bind its subcontractors and employees to not disclose personal information in response to a subpoena, warrant or order of a court or tribunal without the express permission of the public body.

In addition, the contract should require the contractor to inform the public body if any subpoena, warrant or order is issued to the contractor or any person acting on behalf of the contractor. The contract should require the contractor to inform the public body even if the subpoena, warrant or order, or the legislation governing the issuing court or tribunal, requires secrecy.

The impetus for this amendment was United States legislation (the *USA PATRIOT Act*) which expanded the powers of U.S. law enforcement to obtain orders from the Foreign Intelligence Surveillance Court. This Court can issue orders that require a person to produce information in secrecy.

However, the FOIP Act amendment has broader application. In any context where personal information crosses jurisdictional boundaries, or where the laws of another jurisdiction apply to a public body's contractor, there is the possibility that a court in that other jurisdiction will order disclosure of personal information. **Section 40(1)(g)** makes it clear that a public body, which is responsible for compliance with the FOIP Act, must not allow unauthorized disclosure in response to this kind of court action.

Offence and penalty for unauthorized disclosure to a court or tribunal (section 92)

The FOIP Amendment Act establishes a new offence and penalty for unauthorized disclosure of personal information to a court or tribunal. The Act states:

A person must not wilfully disclose personal information to which this Act applies pursuant to a subpoena, warrant or order issued or made by a court, person or body having no jurisdiction in

Alberta to compel the production of information or pursuant to a rule of court that is not binding in Alberta (**section 92(3)**).

A public body cannot rely on **section 40(1)(g)** of the FOIP Act to disclose personal information to a court that does not have jurisdiction in Alberta, such as a court of another country. If no other provision in the FOIP Act permits disclosure, the public body must not disclose the information.

This provision applies to any *person*, including a contractor, a subcontractor, and any of their employees.

The offence and penalty provisions apply only where the FOIP Act applies to the personal information. The Act applies to personal information that is in the custody or *under the control* of a public body (**section 4(1)**). The offence and penalty provisions will clearly apply if a public body has a contract establishing control of personal information that is provided to or obtained by a contractor acting on behalf of a public body. The control will be continued if the public body requires the contractor to include a clause to that effect in any subcontract relating to the public body's personal information.

A person who wilfully contravenes the non-disclosure provision is guilty of the offence and liable

- *in the case of an individual, to a fine of not less than $2,000 and not more than $10,000, and*
- *in the case of any other person, to a fine of not less than $200,000 and not more than $500,000.*

The penalties are substantial. This is not only because of the seriousness of the offence. The penalties are also intended to ensure that a contractor organization considers the serious consequences of unauthorized disclosure if it receives a subpoena, warrant or order from a court with no jurisdiction in Alberta.

Furthermore, the penalties are intended to have a persuasive effect in cases where there is a possible conflict of laws. For example, if a contractor that receives a court order

- is subject to the laws of Alberta (because the FOIP Act applies to personal information that is under the control of a public body), and
- is also subject to the laws of another jurisdiction (because the contractor is an organization with its head office the other jurisdiction),

the contractor is likely to weigh the penalties in both Alberta and the other jurisdiction when making a decision about how to respond to the court order.

Finally, the offence and penalty provisions are intended to signal to other jurisdictions the seriousness with which Alberta takes the contravention of its privacy legislation. Other courts might consider these offence and penalty provisions before issuing an order that will cause a person complying with the court order to commit an offence and be liable to a serious penalty.

Section 92 is also amended to extend the time limit for prosecuting all offences under the FOIP Act from six months to two years:

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

This amendment will allow additional time for a breach of the Act to come to light.

For information on the process for prosecuting an offence under the FOIP Act, see *IPC Investigation Report 2001-IR-010*.

Power of a court or tribunal to compel disclosure (section 3(d))

As amended, the Act 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. (The italicized words have been added.)

The FOIP Act is not intended to limit the ability of a public body to disclose information, including personal information, to Canadian courts and tribunals that require the information to perform their functions. The FOIP Act does not apply to courts and it does not expressly limit the disclosure of information, other than personal information, for any process other than an access request to a public body under the FOIP Act.

The FOIP Act has strict rules regarding the disclosure of personal information. However, the Act expressly

permits disclosure to courts and tribunals under circumstances set out in **section 40(1)**. In particular, a public body may disclose personal information

- for the purpose of complying with a subpoena, warrant or order of certain courts and other tribunals (**section 40(1)(g)**),
- for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada (**section 40(1)(e)**),
- in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure, (**section 40(1)(f)**), such as Rules of Court, or
- for the purpose of enforcing a legal right that the Government of Alberta or a public body has against any person (**section 40(1)(j)**).

The purpose of **section 3(d)** is mainly explanatory. If a public body is uncertain whether it can disclose personal information for court proceedings, it should obtain legal advice.

Designation of public bodies by the Minister (section 94)

Amendments to section 94 apply only to the Government of Alberta.

The FOIP Act has been amended to establish an additional process for designating a body as a public body subject to the FOIP Act. The Minister responsible for the Act will be able to add a body to Schedule 1 of the FOIP Regulation, and delete a body from Schedule 1. This will make newly created bodies subject to the FOIP Act in a more timely manner.

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

Since the FOIP Act came into force in 1995, Schedule 1 of the FOIP Regulation has been updated about every two years, in consultation with all ministries. A newly created body could voluntarily comply with the principles of the FOIP Act until it was added to Schedule 1.

This amendment was needed because, as of 2004, a body that is not subject to the FOIP Act is now automatically subject to Alberta's *Personal Information Protection Act* (PIPA). PIPA has some obligations respecting the protection of personal information that are different from those under the FOIP Act. It would be both onerous and confusing if a body were subject to PIPA until it was designated as a public body subject to the FOIP Act.

The amendment enables the Minister to add a body to Schedule 1 between comprehensive updates. This may be done only if the Minister responsible for the body asks the Minister of Government Services to make a regulation to this effect.

The policy criteria for inclusion of a body in Schedule are set out in the **FOIP Regulation, section 1.1**. The Access and Privacy Branch, Alberta Government Services, has developed guidelines, which are available to Government departments on request, to assist in interpreting and applying these criteria. To recommend a body for inclusion in Schedule 1, the Minister responsible for the body should send a request to the Minister of Government Services.

Section 94 is also amended to allow the Minister of Government Services to *delete* a body from Schedule 1. The Minister can delete the body only if

- it does not meet the criteria for inclusion in Schedule 1, and
- the Information and Privacy Commissioner agrees to the deletion.

In addition to the Ministerial regulation-making power, the Amendment Act adds two new criteria for deletion of a public body from Schedule 1:

- *the body is a public body described in a provision of section 1(p)* (the definition of a public body) *other than section 1(p)(ii)* (section 1(p)(ii) describes a public body designated in Schedule 1 of the FOIP Regulation), or
- *the body would more appropriately be subject to another Act of Alberta or Canada that provides for access to information or protection of privacy or both.*

It is not expected that these provisions will be used frequently. However, situations have arisen where a public body designated in Schedule 1 has been restructured in such a way that the public body meets the definition of a local public body. However, since the Minister continued to appoint the members, it could not be deleted from Schedule 1 under the existing criteria. The Act now enables a "redefinition" of a "public body" as a "local public body." The body is still subject to the FOIP Act, but does not appear in Schedule 1.

The amendment Act also looks ahead to possible situations where a public body might more appropriately be subject to other access-to-information and/or privacy legislation. For example, a private-sector organization that was designated as a public body because it performed a statutory function might expand its operations. If the body were operating primarily as a private business, it might be more appropriate for the body to be subject to private-sector privacy legislation. This may be the case even if the body would meet the criteria for designation as a public body (e.g., the Government provides the majority of the body's funding, through fees or a grant). **Section 94(2)(a)** would allow the body to be deleted from Schedule 1, provided the Commissioner agreed.

Ministerial regulations are filed under the *Regulations Act* and are available on the QP Source web site. Unofficial versions of Ministerial regulations under the FOIP Act will also be made available on the FOIP web site at www.foip.gov.ab.ca.

The use of Ministerial regulations is intended as an interim measure and the Amendment Act further provides that a Ministerial regulation is repealed when a regulation of the Lieutenant Governor in Council designating the body as a public body comes into force (**section 94(4)**).

Coming into force date

The FOIP Amendment Act, 2006 came into force on May 24, 2006.

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 aid in the effective and consistent implementation of the FOIP Act across public bodies. *FOIP Bulletins* are not a substitute for legal advice.

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