



Freedom of Information and Protection of Privacy: Frequently Asked Questions (FAQ) for Post-Secondary Institutions

The Freedom of Information and Protection of Privacy (FOIP) Act aims to strike a balance between the public's right to know and the individual's right to privacy, as those rights relate to information held by public bodies in Alberta.

This law, proclaimed October 1, 1995, affects all provincial government departments, agencies, boards and commissions. The Act was applied to school boards and charter schools on September 1, 1998 and to health care bodies on October 1, 1998. Post-secondary educational institutions will come under the Act on September 1, 1999 and local governments will be covered by the Act on October 1, 1999.

The Act was amended in 1999 to reflect the needs of local public bodies and the recommendations of the Select Special Committee of the Legislative Assembly which reviewed the Act.

The Act should be applied in a common sense manner, and should not dramatically affect the day-to-day operations of public bodies. The questions below have been raised by post-secondary institutions, and a brief reply to each follows. This document will be revised periodically as new questions are raised.

What changes on September 1, 1999?

- Post-secondary institutions will be subject to the *Freedom of Information and Protection of Privacy Act*. The Act provides Albertans with the right to request access to information held by post-secondary institutions; protection of the privacy of personal information; and the right to request correction of personal information.

What post-secondary institutions are covered by the *FOIP Act*?

- The *Act* defines an educational body in section 1(1)(d). The definition includes universities, technical institutes, public colleges and the Banff Centre.

What records of post-secondary institutions are subject to the *FOIP Act*?

- All records that are in the custody or under the control of the post-secondary institution are subject to the *FOIP Act* (section 4(1)) unless a specific exclusion applies.
- Custody is the possession of the record by the Institution, including situations where the records of a third party are stored on the premises of public body.
- A record is under the control of an Institution when it has the authority to manage the record, including restricting, regulating and

administering its use, disclosure and disposition.

Is a FOIP request the only way that individuals can access information about an institution or about themselves?

- No. A formal request under the *FOIP Act* should be seen as a last resort for accessing information from an Institution. The *Act* does not replace existing procedures for accessing personal or other information that would normally be made available to the public or to an individual on request.

Can the salary information of Institution employees be released in response to a FOIP request?

- Not entirely. Information about an officer or employee's classification, salary range and discretionary benefits would have to be disclosed. This disclosure would not be seen as an unreasonable invasion of personal privacy (section 16(2)(e)). Specific salary information for senior officials of institutions is disclosed to government as required information in their financial statements. The financial statements are then published in Volume 4 of the government's Public Accounts.

Can copies of contracts with consultants, engineers or other contractors be released in response to a FOIP request?

- Not entirely. Copies of contracts can be disclosed after they have been awarded on the premise that the public has the right to know who has been engaged to do work for the Institution and how much is being paid for the work. However, some information in the contract, or in supplementary documentation, must be withheld if it meets the three-part test in section 15 for harm to business interests of the contractor. Information may also be withheld if the Institution can show that its disclosure could reasonably harm its economic interests, result in financial loss or interfere with negotiations (section 24). Examples of such information might include unit pricing, actual wages paid to employees of the contractor or proprietary information (e.g., trade secrets).

Can a supplier, in a FOIP request, gain access to evaluation or rating documents used to determine who is the successful bidder?

- Partly. Public tender documents and evaluation criteria are routinely

available. Evaluation notes, summaries, weighting factors and other evaluation documents based on information supplied by the contractor but created by the Institution may be withheld under section 18 if they include references given in confidence about the contractor's suitability or confirmation of qualifications. There may also be reason to withhold parts of the record if they reflect the advice or recommendations of employees as to a suggested course of action (section 23(1)(a)). The names and position titles of employees who conducted the evaluation would not be considered personal information because they performed the assessment as a part of their duties.

Can a researcher use Institution records?

- Yes, but only in accordance with section 40 of the *Act* and the Institution's policy on research and data sharing. When records contain personal information that can identify individuals, they must be stripped of any personal identifiers or the researcher has to apply to the Institution for permission to use the records. The researcher will have to show that the research purpose cannot reasonably be accomplished unless the information is provided in individually identifiable form; that the record linkage will not be harmful to the individuals the information is about; and that the benefits to be gained are clearly in the public interest. The researcher will then have to sign a research agreement. A research agreement is also required under section 41(2) when information, including personal information, is being disclosed from the archives of an Institution for research purposes.

Can a student, in a FOIP request, gain access to a closed letter of reference of which he or she is the subject of the information?

- Generally yes, since the letter would contain personal opinions about the student. However, under section 18 of the *Act*, the Institution may refuse to disclose evaluative or opinion information collected for the purpose of conferring a benefit (e.g., a scholarship or other award) to an individual if the information was supplied in confidence. This is a narrow exception to disclosure of the information under the *Act* and may not apply to letters of reference in every situation.

Can an Institution disclose information on former students/graduates?

- Yes. Section 38(1)(a.1) permits disclosure of personal information if it would not be an unreasonable invasion of a third party's personal privacy. Under section 16(2)(j), it would not be considered an unreasonable invasion of a former student's personal privacy to disclose that he/she had been enrolled in the Institution or in a particular program; that he/she had received an honour or award (including a degree, diploma or certificate) granted by the Institution; that he/she had attended or participated in a public event or activity related to the Institution (e.g., an open house, sporting event or competition, fund-raising activity or cultural event); or that he/she graduated from the Institution. However, this type of information should not be disclosed if the former student or graduate has asked that the information not be disclosed (section 16(3)).

Can personal information of students be disclosed to potential employers who are making reference checks?

- Only if the student consents in writing to the disclosure of opinions about his/her grades, performance and suitability for the job. This consent may take the form of permission to contact the Institution or a named individual as a part of the student's application for employment.

Can a student, in a FOIP request, gain access to an evaluation form completed by an employer who accepted the student on placement?

- Generally this would be released to the student since the evaluation form would be part of the student's educational history and would be the personal information of the student (section 1(1)(n)(vii) and viii)). However, if the evaluation contained personal information about other people, this might have to be severed first.

Can a high school counsellor obtain information on the status of a high school student's application to an Institution?

- Yes, if the student has actually been enrolled in the Institution. Disclosure of the fact that the student is enrolled could be disclosed since it would not be considered to be an unreasonable invasion of the student's personal privacy (sections 38(1)(a.1) and 16(2)(j)). However, it would be better for the student to obtain the information needed and provide it to the counsellor.

Can an Institution disclose the hometowns of its graduates to the media?

- No. The Institution can disclose the names of graduates to the media. Under sections 38(1)(a.1) and 16(2)(j), the disclosure of this information would not be considered an unreasonable invasion of the graduates' personal privacy. However, disclosing the names of their hometowns would require the graduates' consent. Consent for publication can be obtained at the time students apply for graduation.

Can a Registrar disclose a student's address/phone number to a faculty member who is teaching the student or to a Counsellor at the Institution?

- Yes, but only on a "need to know" basis. Section 38(1)(g) allows for disclosure to an employee of the Institution if the information is necessary for the performance of his or her duties. The onus is on the employee to show why the disclosure of this information is necessary.

a) Can an Institution disclose to a parent or spouse information about whether their child or spouse is enrolled as a student at the Institution?

- Yes. Such disclosure would not be considered an unreasonable invasion of the student's personal privacy unless the student has asked that this information not be disclosed (sections 38(1)(a.1) and 16(2)(j)).

b) Can an Institution disclose to a parent or spouse information about the student's attendance, progress, grades, etc.?

- No. This is personal information that should not be disclosed without the consent of the student or for any other discretionary purpose in accordance with section 38(1).

Can an employee of the Institution ask a student for personal information about the student?

- Yes, but only in accordance with sections 32(c) and 33(2) of the *Act*. The employee would have to show that the information relates directly to and is necessary for an operating program or activity of the Institution. He or she would also have to inform the student of this purpose and the use to which the information was going to be put.

Can the finance department of an Institution disclose student information to a collection agency when a student has outstanding accounts with the Institution?

- Yes. Section 38(1)(i) permits disclosure for the purpose of collecting a fine or debt owing by an individual to the Institution or to an assignee of the Institution. However, the Institution should release only the information needed by the collection agency to do its job. This would likely mean name, home address and telephone number and, if the student is working, business address and telephone number, as well as the amount owing.

Can an Institution disclose a student's timetable without consent?

- No. A timetable is information about a student's educational history (section 1(1)(n)(vii)). It would also contain the student's name and likely the student's ID number (section 1(1)(n)(i) and (iv)). Consent should be obtained before disclosure unless discretion can be exercised under section 38(1).

Can the Registrar refuse to release an official transcript to a student who owes money to the Institution for tuition fees, library books or equipment that has not been returned?

- Yes. The Institution can refuse to issue an official transcript or official diploma unless the student settles the outstanding account but should issue a statement of grades to the student, instead. However, if the student submits a FOIP request for his/her own official transcript or diploma, the Institution would not be able to withhold this personal information on the basis that the student owes the Institution money. Section 6 provides an applicant with a right of access to any record in the custody or under the control of the Institution, subject to specific and narrow exceptions.

Can an Institution share information about students with its student association?

- Yes, but only to the extent that an agreement between the Institution and the Student Association requires information sharing (section 38(1)(d)). Sharing personal information without an agreement is likely not a consistent use of information collected from students by the Institution. However, an Institution can't enter or uphold an agreement that breaches an individual's privacy under the *Act*. Other information sharing should only be done with the consent of the student. Consent could be gathered at the time of registration.

Can student grade lists be posted?

- Not unless anonymity can be guaranteed. There are many ways to allow students to access their own grades while ensuring the personal privacy of the other students in a class. If a class is so small that grade holders could be easily identified despite any process to conceal identities, then grade lists should not be posted.

For more information contact:

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