

Frequently Asked Questions for Public Libraries

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.

LIBRARIES

1. What is a "local government body" under the FOIP Act?

- The Act defines a local government body in **section 1(i)**.
- The definition includes municipalities, public libraries, improvement districts, special areas, regional services commissions, housing management bodies, police services, police commissions, drainage and irrigation districts, Metis settlements, and certain boards, committees, etc. of these local government bodies.
- A library includes any municipal library board, library system board, federation board or joint municipal board continued or established under the Libraries Act.

RECORDS

2. What is a "record"?

- **Section 1(q)** of the FOIP Act defines a record as "information in any form and includes notes, images, audio-visual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records".
- It includes handwritten notes and electronic correspondence or messages, which are in the custody or control of a public library.
- Not all records need to be kept by libraries. You can routinely discard transitory records, those that have only short-term, immediate or no value to your organization and that you won't need again in the future. For more information about transitory records see the guide *Official and Transitory Records: A Guide for Government of Alberta Employees*, which is available on the government's Records and Information Management website (www.im.gov.ab.ca).
- If the information in a record will have some future administrative, financial, legal, research or historical value to the libraries, then you should file the record. For example, e-mail messages that record approvals, recommendations, opinions, decisions or business transactions have future value, and are not transitory and should be filed. You can print and file them in your manual filing system or store them in an electronic filing system.

3. What records of libraries are subject to the FOIP Act?

- All records that are in the custody or under the control of a library are subject to the FOIP Act (**section 4(1)**) unless a specific exclusion applies. Published works collected by a library of a public body in accordance with the library's acquisition of materials policy are excluded from the Act (section 4(1)(j.1)).
- A library has custody of a record when the record is in the possession of the library. This includes situations where the records of a third party are kept on the premises of a library.
- A record is under the control of a library when it has the authority to manage the record, including restricting, regulating and administering its use, disclosure and disposition.

4. Are electronic records subject to the FOIP Act?

- The definition of record in **section 1(q)** includes recorded information in any form, including electronic records.

5. How long should a library keep its paper/electronic records?

- There is no simple answer to this question. Each organization should establish records retention and disposition schedules or a retention bylaw for its records, including electronic and transitory records.
- A records retention and disposition schedule is a document that identifies and describes records, and indicates the length of time they shall be retained as active before transfer to semi-active storage; the length of time they should be retained as semi-active prior to final disposition; and the final disposition of the records.
- The FOIP Act allows the destruction of records in accordance with your records retention by-law. If a library does not have such a bylaw, the Act allows destruction as authorized by the council (**section 3(e)(ii)**).
- Under section **53(1)(a)**, the Commissioner has the power to conduct an investigation into how a library is managing its records. Specifically, the Commissioner can check to make sure that a library is following any bylaw it has regarding the destruction of records.
- Libraries are required by **section 35** to keep personal information about an individual for at least one year if that personal information has been used by the library to make a decision about the individual.

6. Can libraries continue to recycle their files or paperwork?

- Yes. Records containing personal information or other sensitive information should be shredded before they are recycled to protect against unauthorized disclosure of personal information if the security of the recycling process cannot be guaranteed.

7. Should e-mail be printed before it is deleted, or should it be saved instead of being deleted?

- The same records management principles for paper files/records should also apply to e-mail documents. Transitory e-mails may be deleted.
- How or where the e-mail documents are retained will depend on the library's records and information management program standards, and whether it has

the capability of filing documents required for future use electronically. If the library does not have that capability, records should be printed and filed in the paper filing system.

8. Does the FOIP Act still apply to health information held by libraries since the *Health Information Act* came into effect in April 2001?

- Yes. The Health Information Act applies only to health information held by health care bodies such as regional health authorities, physicians' offices, pharmacies and laboratories. Health information held by libraries is still covered by the FOIP Act.

9. Who is an "employee" under the FOIP Act?

- The definition of "employee" in the FOIP Act includes 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 library board members, volunteers, students on work experience assignments, contractors, and appointed committee members have the same responsibility to protect privacy as other employees of the library.

10. Are records of contractors subject to the FOIP Act?

- The definition of "employee" in the FOIP Act includes a person retained under contract to perform services for the public body (**section 1(e)**).
- A record may be under the control of a library where a contract permits the library to inspect, review or copy records produced, received or acquired by a contractor.
- Libraries may contract with an organization to provide some kind of service to individuals. The contractor is functioning in the place of the library; the records the contractor creates are subject to the same privacy and access rules as records of the library. As a result, contracts need to include privacy protection clauses, as well as clarity on control of and access to records.
- The Managing Contracts under the FOIP Act, A Guide for Government of Alberta Contract Managers and FOIP Coordinators addresses these issues in detail and may be referred to for more information.

11. Are records of library board members excluded from the FOIP Act?

- Personal records of a library board member are excluded from the Act (**section 4(1)(n)**). This exclusion is intended to cover:
 - private correspondence of a board member that has not been sent or received by the official in his or her capacity as a board member but which may be maintained in his or her office for convenience.
 - records relating to the private business activities of a board member.
 - records relating to a board member's private life such as appointments in a diary or calendar that is also used for business appointments.
- Records dealing with the business of the library are covered by the Act even if they are stored at a board member's home.

12. Does the FOIP Act apply to records which are at the residences of former board members?

- These records are treated no differently than records of current board members. See questions 2 through 11.
- Libraries still have control over records relating to the business of the library, even if they are at the home of a former board member. Thus, these records are still subject to the Act.
- Libraries may want to institute a policy that requires board members to turn over to the board any records related to board business that they may have at the end of their terms.

13. Who is responsible for FOIP within a library?

- The governing body of the library (the board) must designate a head by bylaw under **section 95(a)**. The head is responsible and accountable for all decisions taken under the Act.
- The head can be an individual (e.g. Head Librarian, member of the board, or someone else responsible to the board) or the board or one of its committees.
- Appointing the board or a committee as the head could present practical difficulties in meeting the timelines for responding to FOIP requests or in defending a complaint to the Information and Privacy Commissioner.
- Once the head is designated, the head can delegate any of his or her responsibilities in writing, under **section 85** of the Act (except the ability to delegate).

14. Does a library have any control over how records that have been released in response to a FOIP request are used by the applicant?

- No. A library does not have any control over the use of information once it is released to an applicant.

EMPLOYEE AND BOARD MEMBER INFORMATION

15. If a library receives a FOIP request for the salaries of all employees and board members, does the information have to be released?

- Under **section 17(2)(e)** of the FOIP Act, disclosing the salary range and discretionary benefits of employees is not an unreasonable invasion of privacy. For most employees, the exact salary could only be released with an employee's consent.
- Payment of any honoraria and expenses of board members is set through policy and the policy would be available to the public.

16. Can the library disclose personal information of employees, such as salary, benefits, or home address, to board members?

- Individually identifiable information of employees should not be available to board members on a routine basis.
- However, this information can be disclosed to a board member if the information is necessary for the performance of the duties of the board member (e.g. to the Chair or Treasurer) (**section 40(1)(h)**).

- Only the information that the board member needs to know can be disclosed (**section 40(4)**). For example, in a library with a small number of employees, board members may need to receive information on individual employees' salaries as part of the budget process, depending on how the budget is normally prepared. In a larger library, budget decisions may be made on summary information, so in that case individual salaries would not need to be disclosed.

17. If a library receives a FOIP request for a travel expense claim of an employee or board member, does the information have to be released?

- Expense claims have frequently been the subject of FOIP requests. However, a FOIP request would not necessarily be required since the library would have the discretion to disclose this information under **section 40(1)(b)** if it would not be considered an unreasonable invasion of personal privacy to do so.
- Under **section 17(2)(e)** of the FOIP Act disclosing employment responsibilities of employees is not an unreasonable invasion of privacy. Travel for business purposes is part of an employee's employment responsibilities.
- Expense claim records might also be released if **section 17(5)(a)** applies, where the disclosure is desirable for the purpose of subjecting the activities of the library to public scrutiny. The records would be severed, for example, to withhold employees' credit card numbers or home address, and the names of third parties unless the names were in association with a discretionary benefit granted by the public body (**section 17(2)(g)**).

18. If a library receives a FOIP request for the severance package given to an employee, does the information have to be released?

- In *Order 2001-020*, the City of Calgary received a request for all information related to a buy-out for managers since 1999.
- The Information and Privacy Commissioner upheld the City's decision to release standard clauses from the severance agreements, the individual's job title or position, and the amount of severance paid. This information could be released in accordance with **section 17(2)(e)**.
- The City withheld the individuals' names and signatures (**section 17(4)(g)(i)**), and employee numbers, and termination and retirement dates as employment history (**section 17(4)(d)**).
- In *Order F2003-002*, the Commissioner's Office applied the same reasoning to records related to supplementary pension agreements.
- It is not clear how the order would apply if the applicant had asked for the severance package information of a named individual. However, it appears that the same considerations of **sections 17(2)** and **17(4)** may apply and the outcome may be the same.

FEES

19. Can libraries charge fees for handling FOIP requests?

- **Section 93** of the FOIP Act, and **sections 10 to 14** and **Schedule 2** of the FOIP Regulation set out when fees may be charged for processing FOIP requests.
- **Section 95(b)** of the FOIP Act says that a library board may, by bylaw, set any fees it requires to be paid under **section 93** as long as the fees do not exceed the fees provided for in the FOIP Regulation.

20. What fees can be charged for handling a request for an individual's own personal information?

- Applicants are not required to pay an initial fee when requesting access to their own personal information.
- Fees may only be charged for producing a copy of the records (items 3 to 6 of Schedule 2), and then only when those fees exceed \$10. When the estimated cost exceeds \$10, then the total amount is charged.
- An applicant may request that the fees be waived if the applicant cannot afford payment or if for other reasons it is fair to excuse payment. These requests should be considered on a case-by-case basis.

21. What fees can be charged for handling a request for other records, i.e. an access request?

- Applicants are required to pay an initial fee of \$25 for a one-time request, or \$50 for a continuing request, before processing of the request will begin.
- When the estimated cost of processing the request exceeds \$150, then the total amount is charged. When the estimated cost is less than \$150, then no fee above the \$25 initial fee is charged to the applicant.
- Libraries can charge for the time to search, locate and retrieve a record; to prepare the record for disclosure (severing the record); copying costs; computer processing and programming costs; the cost of supervising an applicant who wishes to examine an original record; and shipping costs.
- Preparing a record for disclosure does not include the time the library takes to decide or discuss what will or will not be severed.
- An applicant may request that the fees be waived if the applicant cannot afford payment or for other reasons if it is fair to excuse payment. These requests should be considered on a case-by-case basis.

22. Should libraries collect GST on FOIP fees?

- No. Canada Revenue Agency does not require libraries to collect GST on fees paid for handling a FOIP request.

23. Should libraries follow the FOIP fee schedule when releasing records outside of the FOIP Act?

- No. The FOIP Act does not replace existing procedures for access to information or records, and does not change the fees libraries may be charging for these services. This is in **section 3** of the FOIP Act.

MEMBER INFORMATION

24. Can libraries use membership information to conduct user surveys?

- When collecting personal information from individuals on the membership application form, the library must, under **section 34(2)** of the FOIP Act, give notice on the purpose for which the information is being collected, the legal authority for the collection, and contact information for questions.
- If the purposes given cover user surveys then the library may use the personal information for user surveys.
- Public Library Services of Municipal Affairs recommends a notice which says:

"The information on this form is collected under the authority of the Libraries Act and the Freedom of Information and Protection of Privacy Act. The information provided will be used to issue a library card, contact you about requested or borrowed library resources, calculate administrative statistics and provide information on library programs. If you have any questions about the collection and use of the information, please contact the (Name) Library at (phone number)."

25. What kind of personal information can a library collect as proof of identification for membership purposes?

- A library can collect the personal information it needs to verify identity.
- The library should consider whether it needs to record the information, for example, driver's licence number, or whether it is sufficient to note that the staff member saw the licence.

26. What should be done to protect personal information contained on inter-library loan forms?

- Personal information should only be disclosed when necessary. If the borrowing library is responsible for returning the material, there is no need for the patron's personal information to be disclosed to the lending library. If the inter-library loan system requires transmittal of the patron's personal information, then the libraries should have an information sharing agreement in place to protect the security and confidentiality of the personal information shared.

27. What kind of notice regarding the sharing of a patron's information should be given to an individual when he or she is applying for a card from The Alberta Library?

- The Alberta Library is a consortium of Libraries throughout Alberta but is not an entity that is itself subject to the FOIP Act. However, since participating libraries will be subject to the Act, those patrons applying for The Alberta Library Card should be given notice regarding the use of their personal information.
- The following notice on the application form (which collects an individual's names, address, phone number and e-mail address) has been developed by The Alberta Library:

"I authorize this and any other information held by a library participating in The Alberta Library Card Program to be shared with other participating libraries for the purposes of providing library services under the Alberta Library Card Program, including tracking library materials and contacting me if I should have outstanding materials or fines."

28. Can libraries share information about which patrons have overdue accounts with other libraries?

- A library can disclose personal information about an individual to another library to assist them to collect a debt owed to the other library by that individual (**section 40(1)(k)**).
- A library cannot disclose to another library a list of all individuals owing fines to their library, as this would not be an authorized disclosure.

29. Can several libraries have a combined patron database?

- Yes. However, libraries should have measures in place to control access to personal information, and advise library members that their personal information is being used in this way.

30. How can library patron information be used in a combined municipal/school library?

- Some libraries are run by staff from more than one organization, for example, from the town and school board.
- If the library is operated as a "common program," **section 40(1)(i)** permits the sharing of personal information of library patrons between staff of the different organizations.
- The disclosure of personal information is permitted where it is necessary for the delivery of a common or integrated program or service and also where necessary for the employees to carry out their duties.

31. Who is responsible for FOIP requests in a joint municipal/school library?

- The two public bodies should decide who will handle FOIP requests and the privacy responsibilities under the FOIP Act.

32. Can a library maintain a file on its patrons that includes a history of materials not returned, fines, damage to books, etc.?

- Yes, if there is a need to collect this information. This would normally mean that there must be a policy on why this information is compiled. For example, the information may be used at a later date to revoke borrowing privileges. If there is no later use of the information by the library, then the information should not be compiled.

33. Can libraries publicly thank donors by name, for instance, in a newspaper advertisement?

- At the time the information is collected, libraries should advise donors that their information will be used this way.

34. Can parents use the FOIP Act to find out which books their children have borrowed?

- Using a FOIP request to gain access to this information should be seen as a last resort.
- However, if there is a FOIP request for this information, a library would need to consider whether a parent was acting in the place of his/her minor children, (with the age of the child being one consideration), and if that is not the case, consider whether it would be an unreasonable invasion of the child's privacy to disclose the information.

LIBRARY OPERATIONS

35. Can a library board disclose to a municipality the names, addresses and usage information of its non-resident patrons?

- If there is an agreement whereby the municipality pays the library fees of patrons from a geographic area, the municipality may need to audit the information on which the payment is based.
- Libraries should discuss what information the municipalities need for this purpose. Personal information may be disclosed under **section 40(1)(I)**, to verify eligibility for a program or benefit. Only the information needed for this purpose should be released.
- Consider whether individual library usage information is needed. Statistical information on borrowers, for example, the number of borrowers who borrowed less than 25 books a year, the number borrowing 25 to 150, or over 150, is not personal information and can be released to anyone.

36. Can the names of library members with overdue materials be posted to collect fines?

- No. This may indicate the financial history of an individual which is personal information.

37. Can a library take photographs of patrons and program participants and include them in displays, newsletters, etc.?

- Libraries can take photographs at public events and use the information in displays or newsletters. A public event or activity is something that is noteworthy, supervised or organized in some way and one that is meant to be open or accessible to the public. Examples might include a library fund-raising event, open house or a summer reading game for children.

38. Can a library retain family history books and yearbooks in its collection?

- Yes, these materials are already in the public domain so this isn't a disclosure of personal information collected by the library.

39. How should incident reports be prepared?

- Reports about accidents occurring on library premises or other incidents should be factual, report observable events, and indicate that opinions are opinions. They should be prepared in such a way that they can be released if requested.

40. Can the names of staff or clients be disclosed to the local police?

- Yes, when the police are investigating a particular incident or the possibility that a criminal offense has been committed, the disclosure of personal information of a staff member or a client is permitted under **section 40(1)(q)**. The Law Enforcement Disclosure Form in Appendix 5 of the *FOIP Guidelines and Practices* manual can be used for this purpose.

41. Can a library disclose personal information to Alberta Justice Maintenance Enforcement Program?

- Yes. **Section 40(1)(y)** permits the disclosure of personal information about individuals for the purposes of enforcing a maintenance order under the

Maintenance Enforcement Act. If this is the basis for requesting the information, the official for Maintenance Enforcement would have to provide proof of identity and specific authority under which the information is being requested.

- Libraries should only disclose the personal information necessary to the enforcement process relating to the order.

42. What are the implications when the municipality or county manages the payroll and benefits on behalf of the library?

- Under **section 40(1)(c)** of the FOIP Act, a library can disclose the personal information needed to perform this service since the disclosure would be for, or consistent with, the purpose for which the information was collected.
- The library should also discuss with the municipality the process for providing records to the library if a staff member asks to see records related to his/her employment. A decision may be needed as to who will handle requests, but the employee should have access in some way.

43. If a library receives a FOIP request for copies of contracts with consultants, engineers or other contractors, would the library release the records?

- 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 library 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 16** for harm to business interests of the contractor.
- Information may also be withheld if the library can show that its disclosure could reasonably harm its economic interests, result in financial loss or interfere with negotiations (**section 25**).
- Examples of information that might be withheld include unit pricing, actual wages paid to employees of the contractor or proprietary information (e.g. trade secrets).

44. What is a "personal information bank" (a PIB)?

- **Section 87.1(5)** of the FOIP Act contains the definition of a PIB. Basically it is any collection of personal information where information about an individual can be found using the individual's name or a unique identifier, such as social insurance number, client number or employee number.
- Libraries are required to have a list that describes their PIBs available at their offices, and to provide it to the public upon request.
- Refer to the publication entitled *Guide to Identifying Personal Information Banks* for more information.

For more information contact:

▶ **[Your Library's FOIP Coordinator](#)**

▶ **FOIP Help Desk**

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