

Freedom of Information and Protection of Privacy Act

R.S.O. 1990, CHAPTER F.31

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Purposes

1. The purposes of this Act are,

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,
 - (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of government information should be reviewed independently of government; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information. R.S.O. 1990, c. F.31, s. 1.

Limited application re Assembly

1.1 (1) This Act applies to the Assembly, but only in respect of records of reviewable expenses of the Opposition leaders and the persons employed in their offices and in respect of the personal information contained in those records. 2002, c. 34, Sched. B, s. 2.

Same

(2) Sections 11, 31, 32, 33, 34, 36, 44, 45 and 46 do not apply with respect to the Assembly. 2002, c. 34, Sched. B, s. 2.

Definitions

(3) In this section,

“Opposition leader” has the same meaning as in section 1 of the *Cabinet Ministers’ and Opposition Leaders’ Expenses Review and Accountability Act, 2002*; (“chef d’un parti de l’opposition”)

“reviewable expense” means a reviewable expense as described in section 3 of the *Cabinet Ministers’ and Opposition Leaders’ Expenses Review and Accountability Act, 2002*. (“dépense sujette à examen”)
2002, c. 34, Sched. B, s. 2.

Definitions

2. (1) In this Act,

“close relative” means a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood or adoption; (“proche parent”)

“educational institution” means an institution that is a college of applied arts and technology or a university; (“établissement d’enseignement”)

“head”, in respect of an institution, means,

(0.a) in the case of the Assembly, the Speaker,

(a) in the case of a ministry, the minister of the Crown who presides over the ministry, and

(b) in the case of any other institution, the person designated as head of that institution in the regulations; (“personne responsable”)

“Information and Privacy Commissioner” and “Commissioner” mean the Commissioner appointed under subsection 4 (1); (“commissaire à l’information et à la protection de la vie privée”, “commissaire”)

“institution” means,

(0.a) the Assembly,

(a) a ministry of the Government of Ontario,

(a.1) a service provider organization within the meaning of section 17.1 of the *Ministry of Government Services Act*, and

(b) any agency, board, commission, corporation or other body designated as an institution in the regulations; (“institution”)

“law enforcement” means,

(a) policing,

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or

(c) the conduct of proceedings referred to in clause (b); (“exécution de la loi”)

“personal information” means recorded information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; (“renseignements personnels”)

“personal information bank” means a collection of personal information that is organized and capable of being retrieved using an individual's name or an identifying number or particular assigned to the individual; (“banque de renseignements personnels”)

“record” means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

(a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

(b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; (“document”)

“regulations” means the regulations made under this Act; (“règlements”)

“responsible minister” means the minister of the Crown who is designated by order of the Lieutenant Governor in Council under section 3; (“ministre responsable”)

“spouse” means,

(a) a spouse as defined in section 1 of the *Family Law Act*, or

(b) either of two persons who live together in a conjugal relationship outside marriage. (“conjoint”) R.S.O. 1990, c. F.31, s. 2 (1); 2002, c. 34, Sched. B, s. 3; 2005, c. 28, Sched. F, s. 1 (1, 3); 2006, c. 19, Sched. N, s. 1 (1); 2006, c. 34, Sched. C, s. 1; 2006, c. 34, Sched. F, s. 1 (1).

Personal information

(2) Personal information does not include information about an individual who has been dead for more than thirty years. R.S.O. 1990, c. F.31, s. 2 (2).

Business identity information, etc.

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity. 2006, c. 34, Sched. C, s. 2.

Same

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling. 2006, c. 34, Sched. C, s. 2.

PART I ADMINISTRATION

Responsible minister

3. The Lieutenant Governor in Council may by order designate a minister of the Crown to be the responsible minister for the purposes of this Act. R.S.O. 1990, c. F.31, s. 3.

Information and Privacy Commissioner

4. (1) There shall be appointed, as an officer of the Legislature, an Information and Privacy Commissioner to exercise the powers and perform the duties prescribed by this or any other Act. R.S.O. 1990, c. F.31, s. 4 (1).

Appointment

(2) The Commissioner shall be appointed by the Lieutenant Governor in Council on the address of the Assembly. R.S.O. 1990, c. F.31, s. 4 (2).

Term and removal from office

(3) The Commissioner shall hold office for a term of five years and may be reappointed for a further term or terms, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly. R.S.O. 1990, c. F.31, s. 4 (3).

Assistant Commissioners

(4) From the officers of the Commissioner's staff, the Commissioner shall appoint one or two Assistant Commissioners and may appoint an Assistant Commissioner for Personal Health Information. 2004, c. 3, Sched. A, s. 81 (1).

Nature of employment

5. (1) The Commissioner shall work exclusively as Commissioner and shall not hold any other office under the Crown or engage in any other employment. R.S.O. 1990, c. F.31, s. 5 (1).

Not a public servant

(2) The Commissioner is not a public servant within the meaning of the *Public Service of Ontario Act, 2006*. 2006, c. 35, Sched. C, s. 47 (1).

Salary

6. (1) The Commissioner shall be paid a salary to be fixed by the Lieutenant Governor in Council. R.S.O. 1990, c. F.31, s. 6 (1).

Idem

(2) The salary of the Commissioner shall not be reduced except on the address of the Assembly. R.S.O. 1990, c. F.31, s. 6 (2).

Expenses

(3) The Commissioner is entitled to be paid reasonable travelling and living expenses while absent from his or her ordinary place of residence in the exercise of any functions under this Act. R.S.O. 1990, c. F.31, s. 6 (3).

Pension

(4) The Commissioner is a member of the Public Service Pension Plan. 1996, c. 6, s. 3.

Temporary Commissioner

7. If, while the Legislature is not in session, the Commissioner dies, resigns or is unable or neglects to perform the functions of the office of Commissioner, the Lieutenant Governor in Council may appoint a Temporary Commissioner to hold office for a term of not more than six months who shall, while in such office, have the powers and duties of the Commissioner and shall be paid such salary or other remuneration and expenses as the Lieutenant Governor in Council may fix. R.S.O. 1990, c. F.31, s. 7.

Staff

8. (1) Subject to the approval of the Lieutenant Governor in Council, the Commissioner may employ mediators and any other officers and employees the Commissioner considers necessary for the efficient operation of the office and may determine their salary and remuneration and terms and conditions of employment. R.S.O. 1990, c. F.31, s. 8 (1).

Benefits

(2) The benefits determined under Part III of the *Public Service of Ontario Act, 2006* with respect to the following matters for public servants employed under that Part to work in a ministry, other than in a minister's office, who are not within a bargaining unit apply to the employees of the office of the Commissioner:

1. Cumulative vacation and sick leave credits for regular attendance and payments in respect of such credits.
2. Plans for group life insurance, medical-surgical insurance or long-term income protection.
3. The granting of leaves of absence. 2006, c. 35, Sched. C, s. 47 (2).

Same

(2.1) For the purposes of subsection (2), if a benefit applicable to an employee of the office of the Commissioner is contingent on the exercise of a discretionary power or the performance of a discretionary function, the power may be exercised or the function may be performed by the Commissioner or any person authorized in writing by the Commissioner. 2006, c. 35, Sched. C, s. 47 (2).

Public Service Pension Plan

(3) The Commissioner shall be deemed to have been designated by the Lieutenant Governor in Council under the *Public Service Pension Act* as a commission whose permanent and probationary staff are required to be members of the Public Service Pension Plan. R.S.O. 1990, c. F.31, s. 8 (3).

Financial

Premises and supplies

9. (1) The Commissioner may lease any premises and acquire any equipment and supplies necessary for the efficient operation of the office of the Commissioner. R.S.O. 1990, c. F.31, s. 9 (1).

Audit

(2) The accounts and financial transactions of the office of the Commissioner shall be audited annually by the Auditor General. R.S.O. 1990, c. F.31, s. 9 (2); 2004, c. 17, s. 32.

PART II FREEDOM OF INFORMATION

ACCESS TO RECORDS

Right of access

10. (1) Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

- (a) the record or the part of the record falls within one of the exemptions under sections 12 to 22; or
- (b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious. 1996, c. 1, Sched. K, s. 1.

Severability of record

(2) If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions. 1996, c. 1, Sched. K, s. 1.

Obligation to disclose

11. (1) Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public. R.S.O. 1990, c. F.31, s. 11 (1).

Notice

(2) Before disclosing a record under subsection (1), the head shall cause notice to be given to any person to whom the information in the record relates, if it is practicable to do so. R.S.O. 1990, c. F.31, s. 11 (2).

Contents of notice

(3) The notice shall contain,

- (a) a statement that the head intends to release a record or a part of a record that may affect the interests of the person;
- (b) a description of the contents of the record or part that relate to the person; and
- (c) a statement that if the person makes representations forthwith to the head as to why the record or part thereof should not be disclosed, those representations will be considered by the head. R.S.O. 1990, c. F.31, s. 11 (3).

Representations

(4) A person who is given notice under subsection (2) may make representations forthwith to the head concerning why the record or part should not be disclosed. R.S.O. 1990, c. F.31, s. 11 (4).

EXEMPTIONS

Cabinet records

12. (1) A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

- (a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;
- (b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;
- (c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;
- (d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
- (e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy; and
- (f) draft legislation or regulations. R.S.O. 1990, c. F.31, s. 12 (1).

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where,

- (a) the record is more than twenty years old; or
- (b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given. R.S.O. 1990, c. F.31, s. 12 (2).

Advice to government

13. (1) A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution. R.S.O. 1990, c. F.31, s. 13 (1).

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

- (a) factual material;
- (b) a statistical survey;
- (c) a report by a valuator, whether or not the valuator is an officer of the institution;
- (d) an environmental impact statement or similar record;
- (e) a report of a test carried out on a product for the purpose of government equipment testing or a consumer test report;
- (f) a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy;
- (g) a feasibility study or other technical study, including a cost estimate, relating to a government policy or project;
- (h) a report containing the results of field research undertaken before the formulation of a policy proposal;
- (i) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program, whether or not the plan or proposal is subject to approval, unless the plan or proposal is to be submitted to the Executive Council or its committees;
- (j) a report of an interdepartmental committee task force or similar body, or of a committee or task force within an institution, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to the Executive Council or its committees;
- (k) a report of a committee, council or other body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;
- (l) the reasons for a final decision, order or ruling of an officer of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution, whether or not the enactment or scheme allows an appeal to be taken against the decision, order or ruling, whether or not the reasons,
 - (i) are contained in an internal memorandum of the institution or in a letter addressed by an officer or employee of the institution to a named person, or
 - (ii) were given by the officer who made the decision, order or ruling or were incorporated by reference into the decision, order or ruling. R.S.O. 1990, c. F.31, s. 13 (2).

Idem

(3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where the record is more than twenty years old or where the head has publicly cited the record as the basis for making a decision or formulating a policy. R.S.O. 1990, c. F.31, s. 13 (3).

Law enforcement

- 14. (1)** A head may refuse to disclose a record where the disclosure could reasonably be expected to,
- (a) interfere with a law enforcement matter;

- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (f) deprive a person of the right to a fair trial or impartial adjudication;
- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
- (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
- (j) facilitate the escape from custody of a person who is under lawful detention;
- (k) jeopardize the security of a centre for lawful detention; or
- (l) facilitate the commission of an unlawful act or hamper the control of crime. R.S.O. 1990, c. F.31, s. 14 (1); 2002, c. 18, Sched. K, s. 1 (1).

Idem

- (2) A head may refuse to disclose a record,
- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
 - (b) that is a law enforcement record where the disclosure would constitute an offence under an Act of Parliament;
 - (c) that is a law enforcement record where the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
 - (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority. R.S.O. 1990, c. F.31, s. 14 (2); 2002, c. 18, Sched. K, s. 1 (2).

Refusal to confirm or deny existence of record

(3) A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) apply. R.S.O. 1990, c. F.31, s. 14 (3).

Exception

(4) Despite clause (2) (a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency where that agency is authorized to enforce and regulate compliance with a particular statute of Ontario. R.S.O. 1990, c. F.31, s. 14 (4).

Idem

(5) Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections. R.S.O. 1990, c. F.31, s. 14 (5).

Civil Remedies Act, 2001

14.1 A head may refuse to disclose a record and may refuse to confirm or deny the existence of a record if disclosure of the record could reasonably be expected to interfere with the ability of the Attorney General to determine whether a proceeding should be commenced under the *Civil Remedies Act, 2001*, conduct a proceeding under that Act or enforce an order made under that Act. 2001, c. 28, s. 22 (1); 2002, c. 18, Sched. K, s. 2; 2007, c. 13, s. 43 (1).

Prohibiting Profiting from Recounting Crimes Act, 2002

14.2 A head may refuse to disclose a record and may refuse to confirm or deny the existence of a record if disclosure of the record could reasonably be expected to interfere with the ability of the Attorney General to determine whether a proceeding should be commenced under the *Prohibiting Profiting from Recounting Crimes Act, 2002*, conduct a proceeding under that Act or enforce an order made under that Act. 2002, c. 2, ss. 15 (1), 19 (4); 2002, c. 18, Sched. K, s. 3.

Relations with other governments

- 15.** A head may refuse to disclose a record where the disclosure could reasonably be expected to,
- (a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;
 - (b) reveal information received in confidence from another government or its agencies by an institution;
or
 - (c) reveal information received in confidence from an international organization of states or a body thereof by an institution,

and shall not disclose any such record without the prior approval of the Executive Council. R.S.O. 1990, c. F.31, s. 15; 2002, c. 18, Sched. K, s. 4.

Defence

16. A head may refuse to disclose a record where the disclosure could reasonably be expected to prejudice the defence of Canada or of any foreign state allied or associated with Canada or be injurious to the detection, prevention or suppression of espionage, sabotage or terrorism and shall not disclose any such record without the prior approval of the Executive Council. R.S.O. 1990, c. F.31, s. 16; 2002, c. 18, Sched. K, s. 5.

Third party information

17. (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute. R.S.O. 1990, c. F.31, s. 17 (1); 2002, c. 18, Sched. K, s. 6.

Tax information

(2) A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax. R.S.O. 1990, c. F.31, s. 17 (2).

Consent to disclosure

(3) A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure. R.S.O. 1990, c. F.31, s. 17 (3).

Economic and other interests of Ontario

18. (1) A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
- (b) information obtained through research by an employee of an institution where the disclosure could reasonably be expected to deprive the employee of priority of publication;
- (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;
- (h) information relating to specific tests or testing procedures or techniques that are to be used for an educational purpose, if disclosure could reasonably be expected to prejudice the use or results of the tests or testing procedures or techniques;
- (i) submissions in respect of a matter under the *Municipal Boundary Negotiations Act* commenced before its repeal by the *Municipal Act, 2001*, by a party municipality or other body before the matter is resolved. R.S.O. 1990, c. F.31, s. 18 (1); 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. K, s. 7; 2005, c. 28, Sched. F, s. 2.

Exception

(2) A head shall not refuse under subsection (1) to disclose a record that contains the results of product or environmental testing carried out by or for an institution, unless,

- (a) the testing was done as a service to a person, a group of persons or an organization other than an institution and for a fee; or
- (b) the testing was conducted as preliminary or experimental tests for the purpose of developing methods of testing. R.S.O. 1990, c. F.31, s. 18 (2).

Information with respect to closed meetings

18.1 (1) A head may refuse to disclose a record that reveals the substance of deliberations of a meeting of the governing body or a committee of the governing body of an educational institution if a statute authorizes holding the meeting in the absence of the public and the subject-matter of the meeting,

- (a) is a draft of a by-law, resolution or legislation; or
- (b) is litigation or possible litigation. 2005, c. 28, Sched. F, s. 3.

Exception

(2) Despite subsection (1), the head shall not refuse to disclose a record under subsection (1) if,

- (a) the information is not held confidentially;
- (b) the subject-matter of the deliberations has been considered in a meeting open to the public; or

(c) the record is more than 20 years old. 2005, c. 28, Sched. F, s. 3.

Application of Act

(3) The exemption in subsection (1) is in addition to any other exemptions in this Act. 2005, c. 28, Sched. F, s. 3.

Solicitor-client privilege

19. A head may refuse to disclose a record,

- (a) that is subject to solicitor-client privilege;
- (b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation; or
- (c) that was prepared by or for counsel employed or retained by an educational institution for use in giving legal advice or in contemplation of or for use in litigation. 2005, c. 28, Sched. F, s. 4.

Danger to safety or health

20. A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual. R.S.O. 1990, c. F.31, s. 20; 2002, c. 18, Sched. K, s. 8.

Personal privacy

21. (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (e) for a research purpose if,
 - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy. R.S.O. 1990, c. F.31, s. 21 (1).

Criteria re invasion of privacy

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record. R.S.O. 1990, c. F.31, s. 21 (2).

Presumed invasion of privacy

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (d) relates to employment or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations. R.S.O. 1990, c. F.31, s. 21 (3).

Limitation

(4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution or a member of the staff of a minister;
- (b) discloses financial or other details of a contract for personal services between an individual and an institution;
- (c) discloses details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a head under circumstances where,
 - (i) the individual represents 1 per cent or more of all persons and organizations in Ontario receiving a similar benefit, and
 - (ii) the value of the benefit to the individual represents 1 per cent or more of the total value of similar benefits provided to other persons and organizations in Ontario; or

(d) discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons. R.S.O. 1990, c. F.31, s. 21 (4); 2006, c. 19, Sched. N, s. 1 (2).

Refusal to confirm or deny existence of record

(5) A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy. R.S.O. 1990, c. F.31, s. 21 (5).

Species at risk

21.1 A head may refuse to disclose a record where the disclosure could reasonably be expected to lead to,

- (a) killing, harming, harassing, capturing or taking a living member of a species, contrary to clause 9 (1) (a) of the *Endangered Species Act, 2007*;
- (b) possessing, transporting, collecting, buying, selling, leasing, trading or offering to buy, sell, lease or trade a living or dead member of a species, any part of a living or dead member of a species, or anything derived from a living or dead member of a species, contrary to clause 9 (1) (b) of the *Endangered Species Act, 2007*; or
- (c) damaging or destroying the habitat of a species, contrary to clause 10 (1) (a) or (b) of the *Endangered Species Act, 2007*. 2007, c. 6, s. 61.

Information soon to be published

22. A head may refuse to disclose a record where,

- (a) the record or the information contained in the record has been published or is currently available to the public; or
- (b) the head believes on reasonable grounds that the record or the information contained in the record will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it. R.S.O. 1990, c. F.31, s. 22.

Exemptions not to apply

23. An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. R.S.O. 1990, c. F.31, s. 23; 1997, c. 41, s. 118 (2).

ACCESS PROCEDURE

Request

24. (1) A person seeking access to a record shall,

- (a) make a request in writing to the institution that the person believes has custody or control of the record;
- (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
- (c) at the time of making the request, pay the fee prescribed by the regulations for that purpose. 1996, c. 1, Sched. K, s. 2.

Frivolous request

(1.1) If the head of the institution is of the opinion on reasonable grounds that the request is frivolous or vexatious, subsections (2) to (5) do not apply to the request. 1996, c. 1, Sched. K, s. 2.

Sufficiency of detail

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1). R.S.O. 1990, c. F.31, s. 24 (2).

Request for continuing access to record

(3) The applicant may indicate in the request that it shall, if granted, continue to have effect for a specified period of up to two years. R.S.O. 1990, c. F.31, s. 24 (3).

Institution to provide schedule

(4) When a request that is to continue to have effect is granted, the institution shall provide the applicant with,

- (a) a schedule showing dates in the specified period on which the request shall be deemed to have been received again, and explaining why those dates were chosen; and
- (b) a statement that the applicant may ask the Commissioner to review the schedule. R.S.O. 1990, c. F.31, s. 24 (4).

Act applies as if new requests were being made

(5) This Act applies as if a new request were being made on each of the dates shown in the schedule. R.S.O. 1990, c. F.31, s. 24 (5).

Request to be forwarded

25. (1) Where an institution receives a request for access to a record that the institution does not have in its custody or under its control, the head shall make all necessary inquiries to determine whether another institution has custody or control of the record, and where the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

- (a) forward the request to the other institution; and
- (b) give written notice to the person who made the request that it has been forwarded to the other institution. R.S.O. 1990, c. F.31, s. 25 (1).

Transfer of request

(2) Where an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request. R.S.O. 1990, c. F.31, s. 25 (2).

Greater interest

(3) For the purpose of subsection (2), another institution has a greater interest in a record than the institution that receives the request for access if,

- (a) the record was originally produced in or for the other institution; or
- (b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy thereof. R.S.O. 1990, c. F.31, s. 25 (3).

When transferred request deemed made

(4) Where a request is forwarded or transferred under subsection (1) or (2), the request shall be deemed to have been made to the institution to which it is forwarded or transferred on the day the institution to which the request was originally made received it. R.S.O. 1990, c. F.31, s. 25 (4).

Institution

(5) In this section,

“institution” includes an institution as defined in section 2 of the *Municipal Freedom of Information and Protection of Privacy Act*. R.S.O. 1990, c. F.31, s. 25 (5).

Notice by head

26. Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 25, the head of the institution to which it is forwarded or transferred, shall, subject to sections 27, 28 and 57, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part thereof, and where necessary for the purpose cause the record to be produced. R.S.O. 1990, c. F.31, s. 26; 1996, c. 1, Sched. K, s. 3.

Extension of time

27. (1) A head may extend the time limit set out in section 26 for a period of time that is reasonable in the circumstances, where,

- (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or
- (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit. R.S.O. 1990, c. F.31, s. 27 (1).

Notice of extension

(2) Where a head extends the time limit under subsection (1), the head shall give the person who made the request written notice of the extension setting out,

- (a) the length of the extension;
- (b) the reason for the extension; and
- (c) that the person who made the request may ask the Commissioner to review the extension. R.S.O. 1990, c. F.31, s. 27 (2).

Frivolous request

27.1 (1) A head who refuses to give access to a record or a part of a record because the head is of the opinion that the request for access is frivolous or vexatious, shall state in the notice given under section 26,

- (a) that the request is refused because the head is of the opinion that the request is frivolous or vexatious;
- (b) the reasons for which the head is of the opinion that the request is frivolous or vexatious; and
- (c) that the person who made the request may appeal to the Commissioner under subsection 50 (1) for a review of the decision. 1996, c. 1, Sched. K, s. 4.

Non-application

(2) Sections 28 and 29 do not apply to a head who gives a notice for the purpose of subsection (1). 1996, c. 1, Sched. K, s. 4.

Notice to affected person

28. (1) Before a head grants a request for access to a record,

- (a) that the head has reason to believe might contain information referred to in subsection 17 (1) that affects the interest of a person other than the person requesting information; or
- (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21 (1) (f),

the head shall give written notice in accordance with subsection (2) to the person to whom the information relates. R.S.O. 1990, c. F.31, s. 28 (1).

Contents of notice

(2) The notice shall contain,

- (a) a statement that the head intends to release a record or part thereof that may affect the interests of the person;
- (b) a description of the contents of the record or part thereof that relate to the person; and
- (c) a statement that the person may, within twenty days after the notice is given, make representations to the head as to why the record or part thereof should not be disclosed. R.S.O. 1990, c. F.31, s. 28 (2).

Description

(2.1) If the request covers more than one record, the description mentioned in clause (2) (b) may consist of a summary of the categories of the records requested if it provides sufficient detail to identify them. 1996, c. 1, Sched. K, s. 5.

Time for notice

(3) The notice referred to in subsection (1) shall be given within thirty days after the request for access is received or, where there has been an extension of a time limit under subsection 27 (1), within that extended time limit. R.S.O. 1990, c. F.31, s. 28 (3).

Notice of delay

(4) Where a head gives notice to a person under subsection (1), the head shall also give the person who made the request written notice of delay, setting out,

- (a) that the record or part thereof may affect the interests of another party;
- (b) that the other party is being given an opportunity to make representations concerning disclosure; and
- (c) that the head will within thirty days decide whether or not to disclose the record. R.S.O. 1990, c. F.31, s. 28 (4).

Representation re disclosure

(5) Where a notice is given under subsection (1), the person to whom the information relates may, within twenty days after the notice is given, make representations to the head as to why the record or the part thereof should not be disclosed. R.S.O. 1990, c. F.31, s. 28 (5).

Representation in writing

(6) Representations under subsection (5) shall be made in writing unless the head permits them to be made orally. R.S.O. 1990, c. F.31, s. 28 (6).

Decision re disclosure

(7) The head shall, within thirty days after the notice under subsection (1) is given, but not before the earlier of,

- (a) the day the response to the notice from the person to whom the information relates is received; or
- (b) twenty-one days after the notice is given,

decide whether or not to disclose the record or the part thereof and give written notice of the decision to the person to whom the information relates and the person who made the request. R.S.O. 1990, c. F.31, s. 28 (7).

Notice of head's decision to disclose

(8) Where a head decides to disclose a record or part thereof under subsection (7), the head shall state in the notice that,

- (a) the person to whom the information relates may appeal the decision to the Commissioner within thirty days after the notice is given; and
- (b) the person who made the request will be given access to the record or to a part thereof, unless an appeal of the decision is commenced within thirty days after the notice is given. R.S.O. 1990, c. F.31, s. 28 (8).

Access to be given unless affected person appeals

(9) Where, under subsection (7), the head decides to disclose the record or a part thereof, the head shall give the person who made the request access to the record or part thereof within thirty days after notice is given under subsection (7), unless the person to whom the information relates asks the Commissioner to review the decision. R.S.O. 1990, c. F.31, s. 28 (9).

Personal information about deceased

(10) In the case of a request by the spouse or a close relative of a deceased individual for disclosure of personal information about the deceased individual, the person making the request shall give the head all information that the person has regarding whether the deceased individual has a personal representative and how to contact the personal representative. 2006, c. 19, Sched. N, s. 1 (3).

Deemed references

(11) If, under subsection (10), the head is informed that the deceased individual has a personal representative and is given sufficient information as to how to contact the personal representative, and if the head has reason to believe that disclosure of personal information about the deceased individual might constitute an unjustified invasion of personal privacy unless, in the circumstances, the disclosure is desirable for compassionate reasons, subsections (1) to (9) apply with the following modifications:

1. The expression “the person to whom the information relates” in subsections (1), (5), (7), (8) and (9) shall be deemed to be the expression “the personal representative”.
2. The expression “the person” in clauses (2) (a) and (b) shall be deemed to be the expression “the deceased individual” and the expression “the person” in clause (2) (c) shall be deemed to be the expression “the personal representative”. 2006, c. 19, Sched. N, s. 1 (3).

Contents of notice of refusal

29. (1) Notice of refusal to give access to a record or a part thereof under section 26 shall set out,

- (a) where there is no such record,
 - (i) that there is no such record, and
 - (ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or
- (b) where there is such a record,
 - (i) the specific provision of this Act under which access is refused,
 - (ii) the reason the provision applies to the record,
 - (iii) the name and position of the person responsible for making the decision, and
 - (iv) that the person who made the request may appeal to the Commissioner for a review of the decision. R.S.O. 1990, c. F.31, s. 29 (1).

Same

(2) Where a head refuses to confirm or deny the existence of a record as provided in subsection 14 (3) (law enforcement), section 14.1 (*Civil Remedies Act, 2001*), section 14.2 (*Prohibiting Profiting from Recounting Crimes Act, 2002*) or subsection 21 (5) (unjustified invasion of personal privacy), the head shall state in the notice given under section 26,

- (a) that the head refuses to confirm or deny the existence of the record;
- (b) the provision of this Act on which the refusal is based;
- (c) the name and office of the person responsible for making the decision; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision.
R.S.O. 1990, c. F.31, s. 29 (2); 2001, c. 28, s. 22 (2); 2002, c. 2, ss. 15 (2), 19 (5); 2007, c. 13, s. 43 (2).

Idem

(3) Where a head refuses to disclose a record or part thereof under subsection 28 (7), the head shall state in the notice given under subsection 28 (7),

- (a) the specific provision of this Act under which access is refused;
- (b) the reason the provision named in clause (a) applies to the record;
- (c) the name and office of the person responsible for making the decision to refuse access; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision.
R.S.O. 1990, c. F.31, s. 29 (3).

Description

(3.1) If a request for access covers more than one record, the statement in a notice under this section of a reason mentioned in subclause (1) (b) (ii) or clause (3) (b) may refer to a summary of the categories of the records requested if it provides sufficient detail to identify them. 1996, c. 1, Sched. K, s. 6.

Deemed refusal

(4) A head who fails to give the notice required under section 26 or subsection 28 (7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given. R.S.O. 1990, c. F.31, s. 29 (4).

Copy of record

30. (1) Subject to subsection (2), a person who is given access to a record or a part thereof under this Act shall be given a copy thereof unless it would not be reasonably practicable to reproduce the record or part thereof by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part thereof in accordance with the regulations. R.S.O. 1990, c. F.31, s. 30 (1).

Access to original record

(2) Where a person requests the opportunity to examine a record or a part thereof and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part thereof in accordance with the regulations. R.S.O. 1990, c. F.31, s. 30 (2).

Copy of part

(3) Where a person examines a record or a part thereof and wishes to have portions of it copied, the person shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature. R.S.O. 1990, c. F.31, s. 30 (3).

INFORMATION TO BE PUBLISHED OR AVAILABLE

Publication of information re institutions

31. The responsible minister shall cause to be published annually a compilation listing all institutions and, in respect of each institution, setting out,

- (a) where a request for a record should be made;
- (b) the name and office of the head of the institution;
- (c) where the material referred to in sections 32, 33, 34 and 45 has been made available; and

- (d) whether the institution has a library or reading room which is available for public use, and if so, its address. R.S.O. 1990, c. F.31, s. 31.

Operation of institutions

- 32.** The responsible minister shall cause to be published annually an indexed compilation containing,
- (a) a description of the organization and responsibilities of each institution including details of the programs and functions of each division or branch of each institution;
 - (b) a list of the general classes or types of records prepared by or in the custody or control of each institution;
 - (c) the title, business telephone number and business address of the head of each institution; and
 - (d) any amendment of information referred to in clause (a), (b) or (c) that has been made available in accordance with this section. R.S.O. 1990, c. F.31, s. 32.

Institution documents

- 33. (1)** A head shall make available, in the manner described in section 35,
- (a) manuals, directives or guidelines prepared by the institution, issued to its officers and containing interpretations of the provisions of any enactment or scheme administered by the institution where the interpretations are to be applied by, or are to be guidelines for, any officer who determines,
 - (i) an application by a person for a right, privilege or benefit which is conferred by the enactment or scheme,
 - (ii) whether to suspend, revoke or impose new conditions on a right, privilege or benefit already granted to a person under the enactment or scheme, or
 - (iii) whether to impose an obligation or liability on a person under the enactment or scheme; or
 - (b) instructions to, and guidelines for, officers of the institution on the procedures to be followed, the methods to be employed or the objectives to be pursued in their administration or enforcement of the provisions of any enactment or scheme administered by the institution that affects the public. R.S.O. 1990, c. F.31, s. 33 (1).

Deletions

- (2)** A head may delete from a document made available under subsection (1) any record or part of a record which the head would be entitled to refuse to disclose where the head includes in the document,
- (a) a statement of the fact that a deletion has been made;
 - (b) a brief statement of the nature of the record which has been deleted; and
 - (c) a reference to the provision of this Act or the *Personal Health Information Protection Act, 2004* on which the head relies. R.S.O. 1990, c. F.31, s. 33 (2); 2004, c. 3, Sched. A, s. 81 (2).

Annual report of head

- 34. (1)** A head shall make an annual report, in accordance with this section, to the Commissioner. 2006, c. 19, Sched. N, s. 1 (4).

Contents of report

- (2)** A report made under subsection (1) shall specify,
- (a) the number of requests under this Act or the *Personal Health Information Protection Act, 2004* for access to records made to the institution or to a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* that is acting as part of the institution;

- (b) the number of refusals by the head to disclose a record under this Act, the provisions of this Act under which disclosure was refused and the number of occasions on which each provision was invoked;
- (c) the number of refusals under the *Personal Health Information Protection Act, 2004* by a health information custodian, within the meaning of that Act, that is the institution or that is acting as part of the institution, of a request for access to a record, the provisions of that Act under which disclosure was refused and the number of occasions on which each provision was invoked;
- (d) the number of uses or purposes for which personal information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth under clauses 45 (d) and (e) of this Act or in any written public statement provided under subsection 16 (1) of the *Personal Health Information Protection Act, 2004* by the institution or a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* that is acting as part of the institution;
- (e) the amount of fees collected under section 57 of this Act by the institution and under subsection 54 (10) of the *Personal Health Information Protection Act, 2004* by the institution or a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* that is acting as part of the institution; and
- (f) any other information indicating an effort by the institution or by a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* that is acting as part of the institution to put into practice the purposes of this Act or the purposes of the *Personal Health Information Protection Act, 2004*. 2006, c. 19, Sched. N, s. 1 (4).

Separate information

- (3) The information required by each of clauses (2) (a), (d), (e) and (f) shall be provided separately for,
 - (a) each separate health information custodian that is the institution or that is acting as part of the institution; and
 - (b) the institution other than in its capacity as a health information custodian and other than in its capacity as an institution containing a health information custodian. 2006, c. 19, Sched. N, s. 1 (4).

Same

- (4) The information required by clause (2) (c) shall be provided separately for each separate health information custodian that is the institution or that is acting as part of the institution. 2006, c. 19, Sched. N, s. 1 (4).

Documents made available

- 35. (1) The responsible minister shall cause the materials described in sections 31, 32 and 45 to be made generally available for inspection and copying by the public and shall cause them to be made available to the public on the Internet or in the reading room, library or office designated by each institution for this purpose. 2006, c. 34, Sched. C, s. 3.

Same

- (2) Every head shall cause the materials described in sections 33 and 34 to be made available to the public on the Internet or in the reading room, library or office designated by each institution for this purpose. 2006, c. 34, Sched. C, s. 3.

Information from heads

- 36. (1) Every head shall provide to the responsible minister the information needed by the responsible minister to prepare the materials described in sections 31, 32 and 45. 2006, c. 34, Sched. C, s. 4.

Annual review

(2) Every head shall conduct an annual review to ensure that all the information the head is required to provide under subsection (1) is provided and that all such information is accurate, complete and up to date. 2006, c. 34, Sched. C, s. 4.

PART III PROTECTION OF INDIVIDUAL PRIVACY

COLLECTION AND RETENTION OF PERSONAL INFORMATION

Application of Part

37. This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public. R.S.O. 1990, c. F.31, s. 37.

Personal information

38. (1) In this section and in section 39,

“personal information” includes information that is not recorded and that is otherwise defined as “personal information” under this Act. R.S.O. 1990, c. F.31, s. 38 (1).

Collection of personal information

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity. R.S.O. 1990, c. F.31, s. 38 (2).

Manner of collection

39. (1) Personal information shall only be collected by an institution directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 42 or under section 32 of the *Municipal Freedom of Information and Protection of Privacy Act*;
- (c) the Commissioner has authorized the manner of collection under clause 59 (c);
- (d) the information is in a report from a reporting agency in accordance with the *Consumer Reporting Act*;
- (e) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
- (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or tribunal;
- (g) the information is collected for the purpose of law enforcement; or
- (h) another manner of collection is authorized by or under a statute. R.S.O. 1990, c. F.31, s. 39 (1).

Notice to individual

(2) Where personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of a public official who can answer the individual’s questions about the collection. R.S.O. 1990, c. F.31, s. 39 (2).

Exception

(3) Subsection (2) does not apply where the head may refuse to disclose the personal information under subsection 14 (1) or (2) (law enforcement), section 14.1 (*Civil Remedies Act, 2001*) or section 14.2 (*Prohibiting Profiting from Recounting Crimes Act, 2002*). 2002, c. 2, s. 19 (6); 2007, c. 13, s. 43 (3).

Retention of personal information

40. (1) Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information. R.S.O. 1990, c. F.31, s. 40 (1).

Standard of accuracy

(2) The head of an institution shall take reasonable steps to ensure that personal information on the records of the institution is not used unless it is accurate and up to date. R.S.O. 1990, c. F.31, s. 40 (2).

Exception

(3) Subsection (2) does not apply to personal information collected for law enforcement purposes. R.S.O. 1990, c. F.31, s. 40 (3).

Disposal of personal information

(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations. R.S.O. 1990, c. F.31, s. 40 (4).

USE AND DISCLOSURE OF PERSONAL INFORMATION

Use of personal information

41. (1) An institution shall not use personal information in its custody or under its control except,

- (a) where the person to whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (c) for a purpose for which the information may be disclosed to the institution under section 42 or under section 32 of the *Municipal Freedom of Information and Protection of Privacy Act*; or
- (d) subject to subsection (2), an educational institution may use personal information in its alumni records for the purpose of its own fundraising activities, if the personal information is reasonably necessary for the fundraising activities. R.S.O. 1990, c. F.31, s. 41; 2005, c. 28, Sched. F, s. 5 (1).

Notice on using personal information for fundraising

(2) In order to use personal information in its alumni records for the purpose of its own fundraising activities, an educational institution shall,

- (a) give notice to the individual to whom the personal information relates when the individual is first contacted for the purpose of soliciting funds for fundraising of his or her right to request that the information cease to be used for fundraising purposes;
- (b) periodically and in the course of soliciting funds for fundraising, give notice to the individual to whom the personal information relates of his or her right to request that the information cease to be used for fundraising purposes; and
- (c) periodically and in a manner that is likely to come to the attention of individuals who may be solicited for fundraising, publish a notice of the individual's right to request that the individual's personal information cease to be used for fundraising purposes. 2005, c. 28, Sched. F, s. 5 (2).

Discontinuing use of personal information

(3) An educational institution shall, when requested to do so by an individual, cease to use the individual's personal information under clause (1) (d). 2005, c. 28, Sched. F, s. 5 (2).

Where disclosure permitted

- 42. (1)** An institution shall not disclose personal information in its custody or under its control except,
- (a) in accordance with Part II;
 - (b) where the person to whom the information relates has identified that information in particular and consented to its disclosure;
 - (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
 - (d) where disclosure is made to an officer, employee, consultant or agent of the institution who needs the record in the performance of their duties and where disclosure is necessary and proper in the discharge of the institution's functions;
 - (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;
 - (f) where disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
 - (g) where disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
 - (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
 - (i) in compassionate circumstances, to facilitate contact with the spouse, a close relative or a friend of an individual who is injured, ill or deceased;
 - (j) to a member of the Legislative Assembly who has been authorized by a constituent to whom the information relates to make an inquiry on the constituent's behalf or, where the constituent is incapacitated, has been authorized by the spouse, a close relative or the legal representative of the constituent;
 - (k) to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf or, where the employee is incapacitated, has been authorized by the spouse, a close relative or the legal representative of the employee;
 - (l) to the responsible minister;
 - (m) to the Information and Privacy Commissioner;
 - (n) to the Government of Canada in order to facilitate the auditing of shared cost programs; or
 - (o) subject to subsection (2), an educational institution may disclose personal information in its alumni records for the purpose of its own fundraising activities if,
 - (i) the educational institution and the person to whom the information is disclosed have entered into a written agreement that satisfies the requirements of subsection (3), and
 - (ii) the personal information is reasonably necessary for the fundraising activities. R.S.O. 1990, c. F.31, s. 42; 2005, c. 28, Sched. F, s. 6 (1); 2006, c. 19, Sched. N, s. 1 (5-7); 2006, c. 34, Sched. C, s. 5.

Notice on disclosing personal information for fundraising

(2) In order to disclose personal information in its alumni records for the purpose of its own fundraising activities, an educational institution shall ensure that,

- (a) notice is given to the individual to whom the personal information relates when the individual is first contacted for the purpose of soliciting funds for fundraising of his or her right to request that the information cease to be disclosed for fundraising purposes;
- (b) periodically and in the course of soliciting funds for fundraising, notice is given to the individual to whom the personal information relates of his or her right to request that the information cease to be disclosed for fundraising purposes; and
- (c) periodically and in a manner that is likely to come to the attention of individuals who may be solicited for fundraising, notice is published in respect of the individual's right to request that the individual's personal information cease to be disclosed for fundraising purposes. 2005, c. 28, Sched. F, s. 6 (2).

Fundraising agreement

(3) An agreement between an educational institution and another person for the disclosure of personal information in the educational institution's alumni records for fundraising activities must,

- (a) require that the notice requirements in subsection (2) are met;
- (b) require that the personal information disclosed under clause (1) (o) be disclosed to the individual to whom the information relates upon his or her request; and
- (c) require that the person to whom the information is disclosed shall cease to use the personal information of any individual who requests that the information not be used. 2005, c. 28, Sched. F, s. 6 (2).

Consistent purpose

43. Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41 (1) (b) and 42 (1) (c) only if the individual might reasonably have expected such a use or disclosure. R.S.O. 1990, c. F.31, s. 43; 2006, c. 34, Sched. C, s. 6.

PERSONAL INFORMATION BANKS

Personal information banks

44. A head shall cause to be included in a personal information bank all personal information under the control of the institution that is organized or intended to be retrieved by the individual's name or by an identifying number, symbol or other particular assigned to the individual. R.S.O. 1990, c. F.31, s. 44.

Personal information bank index

45. The responsible minister shall publish at least once each year an index of all personal information banks setting forth, in respect of each personal information bank,

- (a) its name and location;
- (b) the legal authority for its establishment;
- (c) the types of personal information maintained in it;
- (d) how the personal information is used on a regular basis;
- (e) to whom the personal information is disclosed on a regular basis;
- (f) the categories of individuals about whom personal information is maintained; and

- (g) the policies and practices applicable to the retention and disposal of the personal information.
R.S.O. 1990, c. F.31, s. 45.

Inconsistent use or disclosure

- 46. (1)** A head shall attach or link to personal information in a personal information bank,
- (a) a record of any use of that personal information for a purpose other than a purpose described in clause 45 (d); and
 - (b) a record of any disclosure of that personal information to a person other than a person described in clause 45 (e). R.S.O. 1990, c. F.31, s. 46 (1).

Record of use part of personal information

(2) A record retained under subsection (1) forms part of the personal information to which it is attached or linked. R.S.O. 1990, c. F.31, s. 46 (2).

Notice and publication

(3) Where the personal information in a personal information bank under the control of an institution is used or disclosed for a use consistent with the purpose for which the information was obtained or compiled by the institution but the use is not one of the uses included under clauses 45 (d) and (e), the head shall,

- (a) forthwith notify the responsible minister of the use or disclosure; and
- (b) ensure that the use is included in the index. R.S.O. 1990, c. F.31, s. 46 (3).

RIGHT OF INDIVIDUAL TO WHOM PERSONAL INFORMATION RELATES TO ACCESS AND CORRECTION

Rights of access and correction

Right of access to personal information

- 47. (1)** Every individual has a right of access to,
- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
 - (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution. R.S.O. 1990, c. F.31, s. 47 (1).

Right of correction

- (2)** Every individual who is given access under subsection (1) to personal information is entitled to,
- (a) request correction of the personal information where the individual believes there is an error or omission therein;
 - (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
 - (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement. R.S.O. 1990, c. F.31, s. 47 (2).

Requests and manner of access

Request

- 48. (1)** An individual seeking access to personal information about the individual shall,
- (a) make a request in writing to the institution that the individual believes has custody or control of the personal information;
 - (b) identify the personal information bank or otherwise identify the location of the personal information; and

- (c) at the time of making the request, pay the fee prescribed by the regulations for that purpose. 1996, c. 1, Sched. K, s. 7.

Access procedures

(2) Subsections 10 (2), 24 (1.1) and (2) and sections 25, 26, 27, 27.1, 28 and 29 apply with necessary modifications to a request made under subsection (1). 1996, c. 1, Sched. K, s. 7.

Manner of access

(3) Subject to the regulations, where an individual is to be given access to personal information requested under subsection (1), the head shall,

- (a) permit the individual to examine the personal information; or
- (b) provide the individual with a copy thereof. R.S.O. 1990, c. F.31, s. 48 (3).

Comprehensible form

(4) Where access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information is stored and used. R.S.O. 1990, c. F.31, s. 48 (4).

Exemptions

49. A head may refuse to disclose to the individual to whom the information relates personal information,

- (a) where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information;
- (b) where the disclosure would constitute an unjustified invasion of another individual's personal privacy;
- (c) that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for the awarding of government contracts and other benefits where the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;
- (c.1) if the information is supplied explicitly or implicitly in confidence and is evaluative or opinion material compiled solely for the purpose of,
 - (i) assessing the teaching materials or research of an employee of an educational institution or of a person associated with an educational institution,
 - (ii) determining suitability, eligibility or qualifications for admission to an academic program of an educational institution, or
 - (iii) determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
- (d) that is medical information where the disclosure could reasonably be expected to prejudice the mental or physical health of the individual;
- (e) that is a correctional record where the disclosure could reasonably be expected to reveal information supplied in confidence; or
- (f) that is a research or statistical record. R.S.O. 1990, c. F.31, s. 49; 2001, c. 28, s. 22 (4); 2002, c. 2, ss. 15 (4), 19 (7); 2002, c. 18, Sched. K, s. 10; 2005, c. 28, Sched. F, s. 7.

PART IV APPEAL

Right to appeal

50. (1) A person who has made a request for,

- (a) access to a record under subsection 24 (1);
- (b) access to personal information under subsection 48 (1); or
- (c) correction of personal information under subsection 47 (2),

or a person who is given notice of a request under subsection 28 (1) may appeal any decision of a head under this Act to the Commissioner. R.S.O. 1990, c. F.31, s. 50 (1).

Fee

(1.1) A person who appeals under subsection (1) shall pay the fee prescribed by the regulations for that purpose. 1996, c. 1, Sched. K, s. 8.

Time for application

(2) An appeal under subsection (1) shall be made within thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal. R.S.O. 1990, c. F.31, s. 50 (2).

Immediate dismissal

(2.1) The Commissioner may dismiss an appeal if the notice of appeal does not present a reasonable basis for concluding that the record or the personal information to which the notice relates exists. 1996, c. 1, Sched. K, s. 8.

Non-application

(2.2) If the Commissioner dismisses an appeal under subsection (2.1), subsection (3) and sections 51 and 52 do not apply to the Commissioner. 1996, c. 1, Sched. K, s. 8.

Notice of application for appeal

(3) Upon receiving a notice of appeal, the Commissioner shall inform the head of the institution concerned of the notice of appeal and may also inform any other institution or person with an interest in the appeal, including an institution within the meaning of the *Municipal Freedom of Information and Protection of Privacy Act*, of the notice of appeal. 2006, c. 34, Sched. C, s. 7.

Ombudsman Act not to apply

(4) The *Ombudsman Act* does not apply in respect of a complaint for which an appeal is provided under this Act or the *Municipal Freedom of Information and Protection of Privacy Act* or to the Commissioner or the Commissioner's delegate acting under this Act or the *Municipal Freedom of Information and Protection of Privacy Act*. R.S.O. 1990, c. F.31, s. 50 (4).

Mediator to try to effect settlement

51. The Commissioner may authorize a mediator to investigate the circumstances of any appeal and to try to effect a settlement of the matter under appeal. R.S.O. 1990, c. F.31, s. 51.

Inquiry

52. (1) The Commissioner may conduct an inquiry to review the head's decision if,

- (a) the Commissioner has not authorized a mediator to conduct an investigation under section 51; or
- (b) the Commissioner has authorized a mediator to conduct an investigation under section 51 but no settlement has been effected. 1996, c. 1, Sched. K, s. 9.

Procedure

(2) The *Statutory Powers Procedure Act* does not apply to an inquiry under subsection (1). R.S.O. 1990, c. F.31, s. 52 (2).

Inquiry in private

(3) The inquiry may be conducted in private. R.S.O. 1990, c. F.31, s. 52 (3).

Powers of Commissioner

(4) In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts II and III of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation. R.S.O. 1990, c. F.31, s. 52 (4).

Record not retained by Commissioner

(5) The Commissioner shall not retain any information obtained from a record under subsection (4). R.S.O. 1990, c. F.31, s. 52 (5).

Examination on site

(6) Despite subsection (4), a head may require that the examination of a record by the Commissioner be of the original at its site. R.S.O. 1990, c. F.31, s. 52 (6).

Notice of entry

(7) Before entering any premises under subsection (4), the Commissioner shall notify the head of the institution occupying the premises of his or her purpose. R.S.O. 1990, c. F.31, s. 52 (7).

Examination under oath

(8) The Commissioner may summon and examine on oath any person who, in the Commissioner's opinion, may have information relating to the inquiry, and for that purpose the Commissioner may administer an oath. R.S.O. 1990, c. F.31, s. 52 (8).

Evidence privileged

(9) Anything said or any information supplied or any document or thing produced by a person in the course of an inquiry by the Commissioner under this Act is privileged in the same manner as if the inquiry were a proceeding in a court. R.S.O. 1990, c. F.31, s. 52 (9).

Protection

(10) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by the Commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person. R.S.O. 1990, c. F.31, s. 52 (10).

Protection under Federal Act

(11) A person giving a statement or answer in the course of an inquiry before the Commissioner shall be informed by the Commissioner of his or her right to object to answer any question under section 5 of the *Canada Evidence Act*. R.S.O. 1990, c. F.31, s. 52 (11).

Prosecution

(12) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with a requirement of the Commissioner under this section. R.S.O. 1990, c. F.31, s. 52 (12).

Representations

(13) The person who requested access to the record, the head of the institution concerned and any other institution or person informed of the notice of appeal under subsection 50 (3) shall be given an opportunity to make representations to the Commissioner, but no person is entitled to have access to or to comment on representations made to the Commissioner by any other person or to be present when such representations are made. 2006, c. 34, Sched. C, s. 8 (1).

Right to representation

(14) Each of the following may be represented by a person authorized under the *Law Society Act* to represent them:

1. The person who requested access to the record.
2. The head of the institution concerned.
3. Any other institution or person informed of the notice of appeal under subsection 50 (3). 2006, c. 34, Sched. C, s. 8 (5).

Burden of proof

53. Where a head refuses access to a record or a part of a record, the burden of proof that the record or the part falls within one of the specified exemptions in this Act lies upon the head. R.S.O. 1990, c. F.31, s. 53.

Order

54. (1) After all of the evidence for an inquiry has been received, the Commissioner shall make an order disposing of the issues raised by the appeal. R.S.O. 1990, c. F.31, s. 54 (1).

Idem

(2) Where the Commissioner upholds a decision of a head that the head may refuse to disclose a record or a part of a record, the Commissioner shall not order the head to disclose the record or part. R.S.O. 1990, c. F.31, s. 54 (2).

Terms and conditions

(3) Subject to this Act, the Commissioner's order may contain any terms and conditions the Commissioner considers appropriate. R.S.O. 1990, c. F.31, s. 54 (3); 1996, c. 1, Sched. K, s. 10.

Notice of order

(4) The Commissioner shall give the appellant and the persons who received notice of the appeal under subsection 50 (3) written notice of the order. R.S.O. 1990, c. F.31, s. 54 (4).

Confidentiality

55. (1) The Commissioner or any person acting on behalf of or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their powers, duties and functions under this or any other Act. R.S.O. 1990, c. F.31, s. 55 (1).

Not compellable witness

(2) The Commissioner or any person acting on behalf of or under the direction of the Commissioner is not compellable to give evidence in a court or in a proceeding of a judicial nature concerning anything coming to their knowledge in the exercise or performance of a power, duty or function under this or any other Act. R.S.O. 1990, c. F.31, s. 55 (2).

Proceedings privileged

(3) No proceeding lies against the Commissioner or against any person acting on behalf of or under the direction of the Commissioner for anything done, reported or said in good faith in the course of the exercise or performance or intended exercise or performance of a power, duty or function under this or any other Act. R.S.O. 1990, c. F.31, s. 55 (3).

Delegation by Commissioner

56. (1) The Commissioner may in writing delegate a power or duty granted to or vested in the Commissioner to an officer or officers employed by the Commissioner, except the power to delegate under this section, subject to such limitations, restrictions, conditions and requirements as the Commissioner may set out in the delegation. R.S.O. 1990, c. F.31, s. 56 (1).

Exception re records under s. 12 or 14

(2) The Commissioner shall not delegate to a person other than an Assistant Commissioner his or her power to require a record referred to in section 12 or 14 to be produced and examined. R.S.O. 1990, c. F.31, s. 56 (2).

PART V GENERAL

Fees

57. (1) A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record. 1996, c. 1, Sched. K, s. 11 (1).

(2) Repealed: 1996, c. 1, Sched. K, s. 11 (1).

Estimate of costs

(3) The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25. R.S.O. 1990, c. F.31, s. 57 (3).

Waiver of payment

(4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed in the regulations. R.S.O. 1990, c. F.31, s. 57 (4); 1996, c. 1, Sched. K, s. 11 (2).

Review

(5) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the amount of the fee or the head's decision not to waive the fee. R.S.O. 1990, c. F.31, s. 57 (5); 1996, c. 1, Sched. K, s. 11 (3).

Disposition of fees

(6) The fees provided in this section shall be paid and distributed in the manner and at the times prescribed in the regulations. 1996, c. 1, Sched. K, s. 11 (4).

Annual report of Commissioner

58. (1) The Commissioner shall make an annual report to the Speaker of the Assembly in accordance with subsections (2) and (3). 2004, c. 3, Sched. A, s. 81 (4).

Contents of report

(2) A report made under subsection (1) shall provide a comprehensive review of the effectiveness of this Act and the *Municipal Freedom of Information and Protection of Privacy Act* in providing access to information and protection of personal privacy including,

- (a) a summary of the nature and ultimate resolutions of appeals carried out under subsection 50 (1) of this Act and under subsection 39 (1) of the *Municipal Freedom of Information and Protection of Privacy Act*;
- (b) an assessment of the extent to which institutions are complying with this Act and the *Municipal Freedom of Information and Protection of Privacy Act*; and
- (c) the Commissioner's recommendations with respect to the practices of particular institutions and with respect to proposed revisions to this Act, the *Municipal Freedom of Information and Protection of Privacy Act* and the regulations under them. R.S.O. 1990, c. F.31, s. 58 (2).

Same, personal health information

(3) If the Commissioner has delegated powers or duties under the *Personal Health Information Protection Act, 2004* to the Assistant Commissioner for Personal Health Information, a report made under subsection (1) shall include a report prepared in consultation with the Assistant Commissioner on the exercise of the Commissioner's powers and duties under that Act, including,

- (a) information related to the number and nature of complaints received by the Commissioner under section 56 of that Act and the disposition of them;
- (b) information related to the number and nature of reviews conducted by the Commissioner under section 58 of that Act and the disposition of them;
- (c) information related to the number of times the Commissioner has made a determination under subsection 60 (13) of that Act and general information about the Commissioner's grounds for the determination;
- (d) all other information prescribed by the regulations made under that Act; and
- (e) all other matters that the Commissioner considers appropriate. 2004, c. 3, Sched. A, s. 81 (5).

Tabling

(4) The Speaker shall cause the annual report to be laid before the Assembly if it is in session or shall deposit the report with the Clerk of the Assembly if the Assembly is not in session. 2004, c. 3, Sched. A, s. 81 (5).

Powers and duties of Commissioner

59. The Commissioner may,

- (a) offer comment on the privacy protection implications of proposed legislative schemes or government programs;
- (b) after hearing the head, order an institution to,
 - (i) cease collection practices, and
 - (ii) destroy collections of personal information,that contravene this Act;
- (c) in appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual;

- (d) engage in or commission research into matters affecting the carrying out of the purposes of this Act;
- (e) conduct public education programs and provide information concerning this Act and the Commissioner's role and activities; and
- (f) receive representations from the public concerning the operation of this Act. R.S.O. 1990, c. F.31, s. 59.

Regulations

60. (1) The Lieutenant Governor in Council may make regulations,

- (0.a) prescribing standards for determining what constitutes reasonable grounds for a head to conclude that a request for access to a record is frivolous or vexatious;
- (a) respecting the procedures for access to original records under section 30;
- (b) respecting the procedures for access to personal information under subsection 48 (3);

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by the Statutes of Ontario, 2006, chapter 34, Schedule C, section 9 by adding the following clause:

(b.1) requiring the head of an institution to assist persons with disabilities in making requests for access under subsection 24 (1) or 48 (1);

See: 2006, c. 34, Sched. C, ss. 9, 29 (1).

- (c) prescribing the circumstances under which records capable of being produced from machine readable records are not included in the definition of "record" for the purposes of this Act;
- (d) setting standards for and requiring administrative, technical and physical safeguards to ensure the security and confidentiality of records and personal information under the control of institutions;

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by the Statutes of Ontario, 2006, chapter 34, Schedule C, section 9 by adding the following clause:

(d.1) providing for procedures to be followed by an institution if personal information is disclosed in contravention of this Act;

See: 2006, c. 34, Sched. C, ss. 9, 29 (1).

- (e) setting standards for the accuracy and completeness of personal information that is under the control of an institution;
- (f) prescribing time periods for the purposes of subsection 40 (1);

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by the Statutes of Ontario, 2006, chapter 34, Schedule C, section 9 by adding the following clause:

(f.1) respecting the disposal of personal information under subsection 40 (4), including providing for different procedures for the disposal of personal information based on the sensitivity of the personal information;

See: 2006, c. 34, Sched. C, ss. 9, 29 (1).

- (g) prescribing the amount, the manner of payment and the manner of allocation of fees described in clause 24 (1) (c) or 48 (1) (c), subsection 50 (1.1) or section 57 and the times at which they are required to be paid;
- (h) prescribing matters to be considered in determining whether to waive all or part of the costs required under section 57;

- (i) designating any agency, board, commission, corporation or other body as an institution and designating a head for each such institution;
- (j) prescribing conditions relating to the security and confidentiality of records used for a research purpose;
- (k) prescribing forms and providing for their use;
- (l) respecting any matter the Lieutenant Governor in Council considers necessary to carry out effectively the purposes of this Act. R.S.O. 1990, c. F.31, s. 60; 1996, c. 1, Sched. K, s. 12 (1, 2).

Categories of fees

(2) A regulation made under clause (1) (g) may prescribe a different amount, manner of payment, manner of allocation or time of payment of fees for different categories of records or persons requesting access to a record. 1996, c. 1, Sched. K, s. 12 (3).

Offences

61. (1) No person shall,

- (a) wilfully disclose personal information in contravention of this Act;
- (b) wilfully maintain a personal information bank that contravenes this Act;
- (c) make a request under this Act for access to or correction of personal information under false pretenses;
- (d) wilfully obstruct the Commissioner in the performance of his or her functions under this Act;
- (e) wilfully make a false statement to, mislead or attempt to mislead the Commissioner in the performance of his or her functions under this Act; or
- (f) wilfully fail to comply with an order of the Commissioner. R.S.O. 1990, c. F.31, s. 61 (1).

Penalty

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine not exceeding \$5,000. R.S.O. 1990, c. F.31, s. 61 (2).

Consent of Attorney General

(3) A prosecution shall not be commenced under clause (1) (d), (e) or (f) without the consent of the Attorney General. R.S.O. 1990, c. F.31, s. 61 (3).

Delegation, civil proceedings

Delegation of head's powers

62. (1) A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution or another institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation. R.S.O. 1990, c. F.31, s. 62 (1); 2006, c. 34, Sched. C, s. 10.

Protection from civil proceeding

(2) No action or other proceeding lies against a head, or against a person acting on behalf or under the direction of the head, for damages resulting from the disclosure or non-disclosure in good faith of a record or any part of a record under this Act, or from the failure to give a notice required under this Act if reasonable care is taken to give the required notice. R.S.O. 1990, c. F.31, s. 62 (2).

Vicarious liability of Crown preserved

(3) Subsection (2) does not by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act* relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (2) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (2) had not been enacted. R.S.O. 1990, c. F.31, s. 62 (3).

Vicarious liability of certain institutions preserved

(4) Subsection (2) does not relieve an institution of liability in respect of a tort committed by a person mentioned in subsection (2) to which it would otherwise be subject and the institution is liable for any such tort in a like manner as if subsection (2) had not been enacted. R.S.O. 1990, c. F.31, s. 62 (4).

Informal access

Oral requests

63. (1) Where a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request. R.S.O. 1990, c. F.31, s. 63 (1).

Pre-existing access preserved

(2) This Act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by custom or practice immediately before this Act comes into force. R.S.O. 1990, c. F.31, s. 63 (2).

Information otherwise available

64. (1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation. R.S.O. 1990, c. F.31, s. 64 (1).

Powers of courts and tribunals

(2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document. R.S.O. 1990, c. F.31, s. 64 (2).

Application of Act

65. (1) This Act does not apply to records placed in the archives of an educational institution or the Archives of Ontario by or on behalf of a person or organization other than,

- (a) an institution as defined in this Act or in the *Municipal Freedom of Information and Protection of Privacy Act*; or
- (b) a health information custodian as defined in the *Personal Health Information Protection Act, 2004*. 2005, c. 28, Sched. F, s. 8 (1).

(2) Repealed: 2004, c. 3, Sched. A, s. 81 (7).

Idem

(3) This Act does not apply to notes prepared by or for a person presiding in a proceeding in a court of Ontario if those notes are prepared for that person's personal use in connection with the proceeding. R.S.O. 1990, c. F.31, s. 65 (3).

Same

(4) This Act does not apply to anything contained in a judge's performance evaluation under section 51.11 of the *Courts of Justice Act* or to any information collected in connection with the evaluation. 1994, c. 12, s. 49.

Same

(5) This Act does not apply to a record of the Ontario Judicial Council, whether in the possession of the Judicial Council or of the Attorney General, if any of the following conditions apply:

1. The Judicial Council or its subcommittee has ordered that the record or information in the record not be disclosed or made public.
2. The Judicial Council has otherwise determined that the record is confidential.
3. The record was prepared in connection with a meeting or hearing of the Judicial Council that was not open to the public. 1994, c. 12, s. 49.

Same

(5.1) This Act does not apply to a record of a committee investigating a complaint against a case management master under section 86.2 of the *Courts of Justice Act*, whether in the possession of the committee, the Chief Justice of the Superior Court of Justice, the Attorney General or any other person, if any of the following conditions apply:

1. The committee has ordered that the record or information in the record not be disclosed or made public.
2. The record was prepared in connection with the committee's investigation of the complaint and the complaint was not dealt with in a manner that was open to the public. 1996, c. 25, s. 6; 2002, c. 18, Sched. K, s. 11.

Same

(5.2) This Act does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed. 2006, c. 34, Sched. C, s. 11.

Same

(6) Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest. 1995, c. 1, s. 82.

Exception

(7) This Act applies to the following records:

1. An agreement between an institution and a trade union.
2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.
4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment. 1995, c. 1, s. 82.

Information relating to adoptions

(8) This Act does not apply with respect to the following:

1. Notices registered under section 48.3 of the *Vital Statistics Act* and notices and information registered under section 48.4 of that Act.
2. Notices, certified copies of orders and other information given to the Registrar General under sections 48.5 to 48.10 of that Act.
3. Notices and other information given to a designated custodian by the local director of a children's aid society under section 48.9 of that Act and information given to a birth parent or an adopted person under that section.
4. Information and records in files that are unsealed under section 48.11 of that Act. 2005, c. 25, s. 34.

Exception

(8.1) This Act does not apply,

- (a) to a record respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution; or
- (b) to a record of teaching materials collected, prepared or maintained by an employee of an educational institution or by a person associated with an educational institution for use at the educational institution. 2005, c. 28, Sched. F, s. 8 (2).

Note: Subsection 65 (8.1) was enacted as subsection 65 (8) in source law, Statutes of Ontario, 2005, chapter 28, Schedule F, subsection 8 (2). The subsection is renumbered in this consolidation to distinguish it from existing subsection 65 (8), enacted by Statutes of Ontario, 2005, chapter 25, section 34.

Exception

(9) Despite subsection (8.1), the head of the educational institution shall disclose the subject-matter and amount of funding being received with respect to the research referred to in that subsection. 2005, c. 28, Sched. F, s. 8 (2).

Application of Act

(10) Despite subsection (8.1), this Act does apply to evaluative or opinion material compiled in respect of teaching materials or research only to the extent that is necessary for the purpose of subclause 49 (c.1) (i). 2005, c. 28, Sched. F, s. 8 (2).

Service provider organizations

65.1 (1) This section applies with respect to a service provider organization as defined in section 17.1 of the *Ministry of Government Services Act*. 2006, c. 34, Sched. F, s. 1 (2).

Definitions

(2) In this section,

“customer service information” means, in relation to a service,

- (a) the name, address and telephone number or other contact information of the individual to whom the service is to be provided and, if applicable, the person acting on behalf of that individual,
- (b) the transaction or receipt number provided by the service provider organization in relation to the request for the service,
- (c) information relating to the payment of any fee, and
- (d) such other information as may be prescribed; (“renseignements liés au service à la clientèle”)

“designated service” means a service designated by regulations made under subsection 17.1 (3) of the *Ministry of Government Services Act* as a service that the service provider organization may provide on behalf of the Government or a public body; (“service désigné”)

“Government” means the Government as defined in the *Ministry of Government Services Act*; (“gouvernement”)

“public body” means a public body as defined in section 17.1 of the *Ministry of Government Services Act*. (“organisme public”) 2006, c. 34, Sched. F, s. 1 (2).

Authorization to collect personal information

(3) A service provider organization is authorized to collect personal information for the purposes of providing a designated service. 2006, c. 34, Sched. F, s. 1 (2).

Collection of customer service information

(4) Without limiting the generality of subsection (3), a service provider organization is authorized to collect customer service information, with the consent of the individual to whom the information relates, for the purposes of providing a designated service. 2006, c. 34, Sched. F, s. 1 (2).

Conveying information to the Government, etc.

(5) If required by the regulations, a service provider organization that collects personal information on behalf of the Government or a public body in the course of providing a designated service shall convey the personal information to that Government or public body in accordance with the regulations. 2006, c. 34, Sched. F, s. 1 (2).

Limitation after information conveyed

(6) After the service provider organization has conveyed personal information under subsection (5), the service provider organization shall not use or further disclose the personal information except as allowed by the regulations. 2006, c. 34, Sched. F, s. 1 (2).

Collection of personal information under arrangements

(7) A person who provides services on behalf of a service provider organization pursuant to an arrangement under subsection 17.1 (7) of the *Ministry of Government Services Act* may not collect personal information in connection with providing those services unless the service provider organization and the person have entered into an agreement that governs the collection, use and disclosure of such personal information and the agreement meets the prescribed requirements, if any. 2006, c. 34, Sched. F, s. 1 (2).

Audits by Commissioner

(8) The Commissioner may audit a service provider organization to check that there has been no unauthorized access to or modification of personal information in the custody of the organization and the organization shall co-operate with and assist the Commissioner in the conduct of the audit. 2006, c. 34, Sched. F, s. 1 (2).

Regulations

(9) The Lieutenant Governor in Council may make regulations,

- (a) prescribing information for the purposes of clause (d) of the definition of “customer service information” in subsection (2);
- (b) governing the collection, use and disclosure of personal information by a service provider organization;
- (c) requiring the conveyance of personal information under subsection (5) to the extent and within the time period specified by the regulations;
- (d) allowing the use and disclosure of personal information under subsection (6);
- (e) prescribing requirements for agreements under subsection (7);
- (f) prescribing information for the purposes of clause 65.2 (2) (e). 2006, c. 34, Sched. F, s. 1 (2).

Public consultation before making regulations

65.2 (1) Subject to subsection (7), the Lieutenant Governor in Council shall not make any regulation under subsection 65.1 (9) unless,

- (a) the Minister has published a notice of the proposed regulation in *The Ontario Gazette* and given notice of the proposed regulation by all other means that the Minister considers appropriate for the purpose of providing notice to the persons who may be affected by the proposed regulation;
- (b) the notice complies with the requirements of this section;
- (c) the time periods specified in the notice, during which members of the public may exercise a right described in clause (2) (b) or (c), have expired; and

- (d) the Minister has considered whatever comments and submissions that members of the public have made on the proposed regulation in accordance with clause (2) (b) or (c) and has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the Minister considers appropriate. 2006, c. 34, Sched. F, s. 1 (2).

Contents of notice

- (2) The notice mentioned in clause (1) (a) shall contain,
- (a) a description of the proposed regulation and the text of it;
 - (b) a statement of the time period during which members of the public may submit written comments on the proposed regulation to the Minister and the manner in which and the address to which the comments must be submitted;
 - (c) a description of whatever other rights, in addition to the right described in clause (b), that members of the public have to make submissions on the proposed regulation and the manner in which and the time period during which those rights must be exercised;
 - (d) a statement of where and when members of the public may review written information about the proposed regulation;
 - (e) all prescribed information; and
 - (f) all other information that the Minister considers appropriate. 2006, c. 34, Sched. F, s. 1 (2).

Time period for comments

(3) The time period mentioned in clauses (2) (b) and (c) shall be at least 60 days after the Minister gives the notice mentioned in clause (1) (a) unless the Minister shortens the time period in accordance with subsection (4). 2006, c. 34, Sched. F, s. 1 (2).

Shorter time period for comments

- (4) The Minister may shorten the time period if, in the Minister's opinion,
- (a) the urgency of the situation requires it; or
 - (b) the proposed regulation is of a minor or technical nature. 2006, c. 34, Sched. F, s. 1 (2).

Discretion to make regulations

(5) Upon receiving the Minister's report mentioned in clause (1) (d), the Lieutenant Governor in Council, without further notice under subsection (1), may make the proposed regulation with the changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the Minister's report. 2006, c. 34, Sched. F, s. 1 (2).

No public consultation

- (6) The Minister may decide that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under subsection 65.1 (9) if, in the Minister's opinion,
- (a) the urgency of the situation requires it; or
 - (b) the proposed regulation is of a minor or technical nature. 2006, c. 34, Sched. F, s. 1 (2).

Same

- (7) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under subsection 65.1 (9),
- (a) subsections (1) to (5) do not apply to the power of the Lieutenant Governor in Council to make the regulation; and
 - (b) the Minister shall give notice of the decision to the public and to the Commissioner as soon as is reasonably possible after making the decision. 2006, c. 34, Sched. F, s. 1 (2).

Contents of notice

(8) The notice mentioned in clause (7) (b) shall include a statement of the Minister's reasons for making the decision and all other information that the Minister considers appropriate. 2006, c. 34, Sched. F, s. 1 (2).

Publication of notice

(9) The Minister shall publish the notice mentioned in clause (7) (b) in *The Ontario Gazette* and give the notice by all other means that the Minister considers appropriate. 2006, c. 34, Sched. F, s. 1 (2).

Temporary regulation

(10) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under subsection 65.1 (9) because the Minister is of the opinion that the urgency of the situation requires it, the regulation shall,

- (a) be identified as a temporary regulation in the text of the regulation; and
- (b) unless it is revoked before its expiry, expire at a time specified in the regulation, which shall not be after the second anniversary of the day on which the regulation comes into force. 2006, c. 34, Sched. F, s. 1 (2).

No review

(11) Subject to subsection (12), neither a court, nor the Commissioner shall review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the Minister under this section. 2006, c. 34, Sched. F, s. 1 (2).

Exception

(12) Any person resident in Ontario may make an application for judicial review under the *Judicial Review Procedure Act* on the grounds that the Minister has not taken a step required by this section. 2006, c. 34, Sched. F, s. 1 (2).

Time for application

(13) No person shall make an application under subsection (12) with respect to a regulation later than 21 days after the day on which,

- (a) the Minister publishes a notice with respect to the regulation under clause (1) (a) or subsection (9), where applicable; or
- (b) the regulation is filed, if it is a regulation described in subsection (10). 2006, c. 34, Sched. F, s. 1 (2).

Exercise of rights of deceased, etc., persons

66. Any right or power conferred on an individual by this Act may be exercised,

- (a) where the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;
- (b) by the individual's attorney under a continuing power of attorney, the individual's attorney under a power of attorney for personal care, the individual's guardian of the person, or the individual's guardian of property; and
- (c) where the individual is less than sixteen years of age, by a person who has lawful custody of the individual. R.S.O. 1990, c. F.31, s. 66; 1992, c. 32, s. 13; 1996, c. 2, s. 66.

Conflict with other Act

67. (1) This Act prevails over a confidentiality provision in any other Act unless subsection (2) or the other Act specifically provides otherwise. R.S.O. 1990, c. F.31, s. 67 (1).

Idem

(2) The following confidentiality provisions prevail over this Act:

1. Subsection 53 (1) of the *Assessment Act*.
2. Subsections 45 (8), (9) and (10), 54 (4) and (5), 74 (5), 75 (6), 76 (11) and 116 (6) and section 165 of the *Child and Family Services Act*.
3. Section 68 of the *Colleges Collective Bargaining Act, 2008*.
4. Section 10 of the *Commodity Futures Act*.
5. Repealed: 1993, c. 38, s. 65.
6. Subsection 137 (2) of the *Courts of Justice Act*.
7. Subsection 113 (1) of the *Labour Relations Act*.
- 7.0.1 Sections 89, 90 and 92 of the *Legal Aid Services Act, 1998*.
- 7.1 Section 40.1 of the *Occupational Health and Safety Act*.
8. Subsection 32 (4) of the *Pay Equity Act*.
- 8.1 Repealed: 2006, c. 35, Sched. C, s. 47 (3).
9. Sections 16 and 17 of the *Securities Act*.
10. Subsection 4 (2) of the *Statistics Act*.
11. Subsection 28 (2) of the *Vital Statistics Act*. R.S.O. 1990, c. F.31, s. 67 (2); 1992, c. 14, s. 1; 1993, c. 38, s. 65; 1994, c. 11, s. 388; 1998, c. 26, s. 103; 2006, c. 35, Sched. C, s. 47 (3); 2008, c. 15, s. 86.

68. Repealed: 2006, c. 34, Sched. C, s. 12.

Application

69. This Act applies to any record in the custody or under the control of an institution regardless of whether it was recorded before or after this Act comes into force. R.S.O. 1990, c. F.31, s. 69.

Crown bound

70. This Act binds the Crown. R.S.O. 1990, c. F.31, s. 70.