



Office of the
Saskatchewan Information
and Privacy Commissioner

Guide to FOIP

The Freedom of Information and Protection of Privacy Act

Table of Contents

Chapter 1 –Purpose and Scope of FOIP

Overview.....	1
Quasi-Constitutional Status.....	1
The Purposes of FOIP.....	2
Object or Purpose Clause.....	2
The Scope of FOIP.....	6
Government Institutions.....	6
<i>Subsection 2(1)(d): Definition of a government institution</i>	7
<i>Subsection 2(2): Bodies Not Included</i>	8
FOIP Applies.....	9
<i>Section 5: Possession or control</i>	9
<i>Section 24: Personal Information</i>	15
FOIP Does Not Apply	15
<i>Subsection 3(1)(a)</i>	16
Information Services Corporation (ISC).....	17
<i>Subsection 3(1)(b)</i>	20
<i>Subsection 3(1)(c)</i>	22
<i>Subsection 3(3)</i>	24
<i>Subsection 3(4)</i>	24
<i>Subsection 24(1.1)</i>	25
<i>Section 23</i>	26
Subsection 23(1)	27
Subsection 23(2)	29
Subsection 23(3)	29
Section 4: Existing Rights Preserved.....	32
<i>Subsection 4(a)</i>	34
<i>Subsection 4(b)</i>	36
<i>Subsection 4(c)</i>	36
<i>Subsection 4(d)</i>	38
<i>Subsection 4(e)</i>	39
<i>Subsection 4(f)</i>	39

Chapter 2 - Administration of FOIP

Overview	1
Minister of Justice and Attorney General – Roles & Responsibilities	2
Minister’s Annual Report.....	2
Ministry of Justice and Attorney General	4
Government Institutions – Roles & Responsibilities	4
Head of a Government Institution	6
The FOIP Coordinator or Privacy Officer.....	7
Section 60: Delegation.....	9
Notices Required by FOIP.....	12
Routine Disclosure & Active Dissemination.....	14
Proactive Reporting of Privacy Breaches.....	15
Information & Privacy Commissioner - Roles & Responsibilities.....	17
Section 33: Privacy Powers.....	18
Section 38: Appointment.....	20
Section 44: Oath or Affirmation.....	21
Section 46: Confidentiality	22
Section 45: General Powers of Commissioner	24
Section 45.1: Power to Authorize a Government Institution to Disregard Applications or Requests.....	25
Section 47: Non-compellability.....	26
Section 50: Refusal to Review.....	27
Section 53: Conduct of Review	28
Section 54: Powers of Commissioner	30
Section 55: Report of Commissioner.....	31
Section 62: Annual Report.....	33
Procedural Fairness.....	33
Court of King’s Bench - Roles & Responsibilities	35
Section 57: Appeal to Court.....	35
Section 58: Powers of Court on Appeal.....	37

Section 61: Burden of Proof	42
Standard Required to Meet Burden of Proof.....	42
Who has the Burden of Proof	45
Affidavit Evidence	47
Offences & Penalties	48
Section 66: Proceedings Prohibited	48
Section 67: Immunity from Prosecution	49
Section 68: Summary Offences.....	50
Privacy and Access Offences.....	53
Not Cooperating with the Commissioner	54

Chapter 3 – Access to Records

Overview.....	1
Who Has The Right of Access.....	2
Section 5: Right of Access	3
Processing Access to Information Requests.....	5
Name of Applicant is Personal Information	6
Reason for Request Not Relevant.....	7
Questions in Access to Information Requests.....	7
Verifying Identity.....	8
Requests Not on “Form A”.....	10
Search for Records	12
IPC Review of Search Efforts.....	13
Searching Records of Employees.....	17
Government Records in Personal Email Accounts.....	17
Personal Records in Government Email Accounts.....	21
Records Not Responsive	26
Creating Records.....	28
Section 5.1: Duty to Assist	30
Subsection 5.1(1)	30
Subsection 5.1(2)	34
Section 6: Application.....	35
Subsection 6(1)(a).....	35

Subsection 6(1)(b).....	37
Clarifying vs Narrowing.....	38
Subsection 6(2).....	42
Subsection 6(3).....	42
Clarifying vs Narrowing.....	43
Subsection 6(4).....	46
Section 7: Response Required.....	46
Subsection 7(1).....	48
Subsection 7(2).....	48
Calculating 30 Days.....	49
Subsection 7(2)(a).....	51
Subsection 7(2)(b).....	52
Subsection 7(2)(c).....	53
Subsection 7(2)(d).....	54
Subsection 7(2)(e).....	56
Subsection 7(2)(f).....	57
Subsection 7(2)(g).....	58
Subsection 7(3).....	59
Subsection 7(4).....	59
Subsection 7(5).....	62
Section 7.1: Applications Deemed Abandoned.....	63
Subsection 7.1(1).....	64
Subsection 7.1(2).....	65
Subsection 7.1(3).....	66
Section 8: Severability	67
Section 9: Fee.....	71
Subsection 9(1).....	71
Subsection 9(2).....	72
Creating a Fee Estimate.....	72
Subsection 9(3).....	78
Subsection 9(4).....	78
Subsection 9(5).....	79
Fee Waivers.....	79

Section 10: Manner of Access.....	87
Subsection 10(1)	88
Subsection 10(2)	88
Subsection 10(3)	90
Subsection 10(4).....	92
Section 11: Transfer of Application.....	93
Subsection 11(1).....	94
Subsection 11(2).....	95
Subsection 11(3).....	96
Section 12: Extension of Time	97
Subsection 12(1)(a)	98
Subsection 12(1)(a)(i)	99
Subsection 12(1)(a)(ii)	101
Subsection 12(1)(b)	104
Subsection 12(1)(c)	107
Subsection 12(2).....	108
Subsection 12(3).....	109
Section 31: Individual’s Access to Personal Information	111
Subsection 31(1).....	111
Subsection 31(2).....	112
Section 45.1: Power to Authorize a Government Institution to Disregard Applications or Requests	118
Subsection 45.1(1).....	119
Subsection 45.1(2)(a)	120
Subsection 45.1(2)(b)	124
Subsection 45.1(2)(c)	128
Section 49: Application for Review	133
Subsection 49(1)(a)	135
Subsection 49(1)(a.1)	137
Subsection 49(1)(a.2)	138
Subsection 49(1)(a.3)	139
Subsection 49(1)(a.4)	139
Subsection 49(1)(b)	142
Subsection 49(1)(c)	142

Subsection 49(2).....	143
Subsection 49(3)	144
Subsection 49(4)	145
Section 50: Review or Refusal to Review	146
Subsection 50(1)	147
Subsection 50(2)	148
Subsection 50(2)(a).....	149
Subsection 50(2)(a.1)	152
Subsection 50(2)(a.2)	152
Subsection 50(2)(a.3)	152
Subsection 50(2)(a.4)	153
Subsection 50(2)(a.5)	153
Subsection 50(2)(a.6)	154
Subsection 50(2)(a.7)	155
Subsection 50(2)(b)	155
Subsection 50(2)(c)	157
Section 57: Appeal to the Court	158
Section 59: Exercise of Rights by Other Persons.....	161
Subsection 59(a).....	162
Subsection 59(b)	164
Subsection 59(c).....	166
Subsection 59(d)	168
Subsection 59(e).....	171
Section 65: Access to Manuals.....	174
Subsection 65(1)	174
Subsection 65(2)	176
Section 65.1: Records Available Without an Application.....	177
Routine Disclosure	177
Active Dissemination	178

Chapter 4 – Exemptions From the Right of Access

Overview.....	1
Interpreting Exemptions.....	2

Limited & Specific.....	4
Balancing Interests.....	5
Class and Harm - Based Exemptions.....	7
Class-based Exemptions	7
Harm-based Exemptions.....	8
Mandatory & Discretionary Exemptions.....	9
Mandatory Exemptions.....	9
Discretionary Exemptions.....	10
Exercise of Discretion.....	11
Public Interest Override	14
Subsection 19(3).....	14
Subsection 29(2)(o).....	15
Section 13: Records From Other Governments	16
Subsection 13(1)(a)	17
Subsection 13(1)(b).....	21
Subsection 13(1)(c)	26
Subsection 13(1)(d).....	31
Subsection 13(2).....	35
Section 14: Information Injurious to Intergovernmental Relations or National Defence.....	39
Subsection 14(a)	39
Subsection 14(b).....	41
Section 15: Law Enforcement and Investigations	43
Subsection 15(1)(a)	44
Subsection 15(1)(a.1).....	48
Subsection 15(1)(b).....	50
Subsection 15(1)(c)	52
Subsection 15(1)(d).....	56
Subsection 15(1)(e)	59
Subsection 15(1)(f).....	62
Subsection 15(1)(g).....	65
Subsection 15(1)(h).....	69
Subsection 15(1)(i).....	71
Subsection 15(1)(j).....	73

Subsection 15(1)(k).....	76
Subsection 15(1)(k.1)	81
Subsection 15(1)(k.2)	82
Subsection 15(1)(k.3)	86
Subsection 15(1)(l).....	88
Subsection 15(1)(m).....	90
Subsection 15(2).....	93
Section 16: Cabinet Documents.....	95
Subsection 16(1)(a)	100
Subsection 16(1)(b).....	106
Subsection 16(1)(c)	113
Subsection 16(1)(d).....	118
Subsection 16(2).....	123
Subsection 16(2)(a).....	123
Subsection 16(2)(b)	124
Section 17: Advice From Officials.....	126
Subsection 17(1)(a)	129
Subsection 17(1)(b).....	137
Subsection 17(1)(c)	143
Subsection 17(1)(d).....	148
Subsection 17(1)(e)	152
Subsection 17(1)(f).....	154
Subsection 17(1)(g).....	157
Subsection 17(2).....	161
Subsection 17(3).....	165
Section 18: Economic and Other Interests	166
Subsection 18(1)(a)	168
Subsection 18(1)(b).....	171
Subsection 18(1)(c)	176
Subsection 18(1)(d).....	180
Subsection 18(1)(e)	184
Subsection 18(1)(f).....	189
Subsection 18(1)(g).....	192

Subsection 18(1)(h).....	195
Subsection 18(2).....	198
Section 19: Third Party Business Information.....	199
Subsection 19(1)(a).....	202
Subsection 19(1)(b).....	204
Subsection 19(1)(c).....	216
Subclause 19(1)(c)(i).....	217
Subclause 19(1)(c)(ii).....	222
Subclause 19(1)(c)(iii).....	228
Subsection 19(1)(d).....	232
Subsection 19(1)(e).....	235
Subsection 19(1)(f).....	238
Subsection 19(2).....	241
Subsection 19(3).....	242
Section 20: Testing Procedures, Tests and Audits.....	250
Subsection 20(a).....	250
Subsection 20(b).....	254
Section 21: Danger to Health or Safety.....	257
Section 22: Solicitor-Client Privilege.....	261
Subsection 22(a).....	262
Solicitor-client privilege.....	264
Case-by-Case Privilege.....	277
Common Interest Privilege.....	279
Legislative Privilege.....	281
Litigation Privilege.....	283
Settlement Privilege.....	290
Subsection 22(b).....	291
Subsection 22(c).....	293
Subsection 23: Confidentiality Provisions in Other Enactments.....	295
Subsection 29(1): Disclosure of Personal Information.....	296
Section 30: Personal Information of Deceased Individual.....	297
Subsection 30(1).....	297
Subsection 30(2).....	298

Section 31: Access to Personal Information	299
Subsection 31(1)	300
Subsection 31(2)	300

Chapter 5 – Third Party Information

Overview	1
Quick Reference 1: Third party timelines	2
Quick Reference 2: Contracting with government institutions	4
Section 2: Definition of a third party	9
Section 19: Third party information	11
Subsection 19(1)(a)	14
Subsection 19(1)(b)	16
Subsection 19(1)(c)	28
Subsection 19(1)(c)(i)	29
Subsection 19(1)(c)(ii)	35
Subsection 19(1)(c)(iii)	40
Subsection 19(1)(d)	45
Subsection 19(1)(e)	48
Subsection 19(1)(f)	51
Subsection 19(2)	55
Subsection 19(3)	56
Section 29: Disclosure of Personal Information	64
Subsection 29(2)(o): Disclosure of personal information	64
Subsection 29(2)(o)(i)	64
Subsection 29(2)(o)(ii)	71
Section 34: Notice to third party	76
Subsection 34(1)(a)	77
The absence of standing	79
Subsection 34(1)(b)	82
The absence of standing	83
Subsection 34(2)	86
Subsection 34(2)(a)	86
Subsection 34(2)(b)	88

Subsection 34(3)	91
Subsection 34(4)	93
Section 35: Waiver of notice.....	94
Section 36: Right to make representations.....	94
Subsection 36(1)(a)	95
Subsection 36(1)(b).....	96
Subsection 36(2)	99
Section 37: Decision.....	99
Subsection 37(1)(a)	101
Subsection 37(1)(b).....	102
Subsection 37(2)	104
Subsection 37(2)(a)	105
Subsection 37(2)(b).....	107
Subsection 37(3)	108
Subsection 37(4)	110
Section 49: Application for review.....	112
Subsection 49(1)	113
Subsection 49(2)	114
Subsection 49(3)	116
Subsection 49(4)	117
Section 52: Notice of application for review.....	120
Section 53: Conduct of review	121
Section 55: Report of commissioner.....	123
Section 56: Decision of head.....	125
Section 57: Appeal to court.....	127

Chapter 6 – Protection of Privacy

Overview.....	1
The Right of Privacy.....	2
Privacy as a Charter Right.....	4
Privacy versus Confidentiality	5
The Threat of Identity Theft.....	6
10 Fair Information Principles	10
Accountability.....	12

Identifying Purposes.....	12
Consent.....	13
Limiting Collection	13
Limiting Use, Disclosure and Retention	13
Accuracy	14
Safeguards.....	14
Openness.....	15
Individual Access.....	15
Challenging Compliance.....	15
Need-to-Know Principle.....	16
Data Minimization Principle.....	17
De-identified information	18
Necessary, Effective & Proportional.....	24
Consent Requirements	25
Best Practice Steps for Consent Forms	29
Section 24: Definition of Personal Information.....	30
What is not Personal Information?	36
Subsection 24(1)(a)	38
Subsection 24(1)(b).....	42
Subsection 24(1)(d).....	45
Subsection 24(1)(e)	47
Subsection 24(1)(f).....	50
Subsection 24(1)(g).....	52
Subsection 24(1)(h).....	56
Subsection 24(1)(i).....	58
Subsection 24(1)(j).....	61
Subsection 24(1)(k).....	63
Subsection 24(1)(k)(i).....	64
Subsection 24(1)(k)(ii).....	66
Subsection 24(1.1).....	67
Subsection 24(1.2).....	69
Subsection 24(2)(a)	71
Subsection 24(2)(b).....	74

Subsection 24(2)(c)	75
Subsection 24(2)(d)	78
Subsection 24(2)(e)	80
Subsection 24(2)(f)	83
Subsection 24(2)(g)	86
Subsection 24(3)	87
Section 24.1: Duty of government institution to protect	89
Safeguards	90
Administrative	91
Technical	96
Physical	104
Subsection 24.1(a)	107
Subsection 24.1(b)	109
Subsection 24.1(b)(i)	109
Subsection 24.1(b)(ii)	112
Subsection 24.1(b)(iii)	113
Subsection 24.1(c)	116
Section 24.2: Information Management Service Provider	118
Subsection 24.2(1)	119
Subsection 24.2(2)	120
Subsection 24.2(3)	123
Subsection 24.2(4)	124
Section 25: Purpose of Information	125
Over collection	128
Unsolicited Information	130
Section 26: Manner of Collection	132
Subsection 26(1): Direct Collection	133
Subsection 26(1)(a): Indirect Collection	134
Subsection 26(1)(b): Indirect Collection	137
Subsection 26(1)(c): Indirect Collection	138
Subsection 26(1)(c)(i)	139
Subsection 26(1)(c)(ii)	144
Subsection 26(1)(d): Indirect Collection	147

Subsection 26(1)(e): Indirect Collection	150
Subsection 26(1)(e)(i)	150
Subsection 26(1)(e)(ii).....	153
Subsection 26(1)(f): Indirect Collection.....	155
Subsection 26(1)(g): Indirect Collection	158
Subsection 26(1)(h): Indirect Collection	160
Subsection 26(2): Inform Individual.....	163
Subsection 26(3): Exception to Informing	166
Section 27: Standard of Accuracy.....	168
Section 28: Use of Personal Information.....	172
Subsection 28(a).....	175
Subsection 28(b)	180
“Use” Involving Contracted Third Parties.....	182
Subcontracting by Outsourcers.....	183
Section 29: Disclosure of Personal Information	184
Subsection 29(1)	187
Subsection 29(2)(a)	189
Subsection 29(2)(b).....	192
Subsection 29(2)(b)(i).....	192
Subsection 29(2)(b)(ii).....	195
Subsection 29(2)(c)	197
Subsection 29(2)(d).....	198
Subsection 29(2)(e)	199
Subsection 29(2)(f).....	201
Subsection 29(2)(f)(i).....	201
Subsection 29(2)(f)(ii).....	203
Subsection 29(2)(g).....	204
Subsection 29(2)(h).....	206
Subsection 29(2)(h.1)	212
Subsection 29(2)(i).....	216
Subsection 29(2)(j).....	221
Subsection 29(2)(k).....	225
Subsection 29(2)(l).....	231

Subsection 29(2)(m).....	235
Subsection 29(2)(n).....	238
Subsection 29(2)(o).....	240
Subsection 29(2)(o)(i).....	241
Subsection 29(2)(o)(ii).....	248
Subsection 29(2)(p).....	249
Subsection 29(2)(q).....	251
Subsection 29(2)(r).....	254
Subsection 29(2)(s).....	256
Subsection 29(2)(t).....	257
Subsection 29(2)(u).....	260
Subsection 29(3).....	263
Subsection 29(4).....	265
Section 29.1: Notification.....	268
Privacy Breaches.....	271
Best Practice Steps for Breaches.....	273
Contain the breach.....	273
Notify.....	274
Investigate.....	275
Prevent.....	280
How IPC Investigations are Initiated.....	280
Process for Proactively Reported Breaches.....	281
Section 30: Personal information of deceased individual.....	282
Subsection 30(1).....	282
Subsection 30(2).....	284
Section 31: Access to personal information.....	287
Subsection 31(1).....	288
Subsection 31(2).....	289
Section 32: Right of correction.....	295
Subsection 32(1).....	296
Subsection 32(2).....	299
Subsection 32(2)(a).....	301
Subsection 32(2)(b).....	305

Subsection 32(2)(c)	307
Subsection 32(3)	308
Section 49: Application for review	309
Subsection 49(1)(a.4): Privacy complaints.....	309
Subsection 49(1)(c): Correction reviews.....	312
Subsection 49(2): 1 Year Deadline.....	313
Section 50: Review or refusal to review.....	313
Subsection 50(2)(a.6): Insufficient evidence	314
Validity Test.....	314
Privacy Impact Assessments (PIAs)	315
Records & Information Management (RIM).....	319
Basic RIM Concepts.....	319
RIM Best Practices.....	321
Record Retention.....	333
Record Disposal.....	336
Best Practices for the Secure Destruction of Personal Information	338
Preserving Records.....	349
Focus on Issues in Privacy.....	351
Big Data and Predictive Analytics.....	351
Biometrics and Facial Recognition.....	354
Body Worn Cameras	355
Data Brokers.....	357
Personal Email Use for Business.....	359
Snooping.....	365
Surveillance.....	367