



Office of the
Saskatchewan Information
and Privacy Commissioner

PROPOSALS FOR AMENDMENTS TO

*The Freedom of Information and Protection
of Privacy Act (FOIP)*

and

*The Local Authority Freedom of Information and Protection
of Privacy Act (LA FOIP)*

Presented by: Ronald J. Kruzeniski, Information and
Privacy Commissioner
Diane Aldridge, Director of Compliance

Part I Amendments for Citizens

1. Object or Purpose Clause

- ▣ There is presently no object or purpose clause in FOIP or LA FOIP.
- ▣ It is proposed the Acts have a purpose clause.

2. Definition of “Government Institution”

- ▣ FOIP presently defines “government institution” but new institutions need to be added by the Regulations.
- ▣ It is proposed that all government bodies or agencies be government institutions unless specifically exempted by the Regulations.

3. Definition of “Employee”

- ▣ There is presently no definition of “employee” in the Acts.
- ▣ It is proposed that there be a definition of “employee” that includes contractors and agents.

4. Duty to Assist

- ▣ The Acts do not contain any express provision regarding duty to assist.
- ▣ A new section is proposed similar to that in *The Health Information Protection Act* (HIPA)

5. Duty to Protect

- ▣ The Acts do not contain an express provision regarding the duty to assist.
- ▣ A new section is proposed similar to that in HIPA.

6. Mandatory Breach Notification

- ▣ There is presently no provision in the Acts regarding mandatory breach notification.
- ▣ This amendment provides direction to public bodies as to when notice of a privacy breach is to be reported to the Commissioner and the affected individuals.

7. Grounds for Review

- ▣ It is proposed that the Acts be amended so that the Commissioner may review public bodies' decisions regarding the transfer of a request to another government institution, fee estimates, refusals to waive fees, any suspected privacy breach, allegations that a duty imposed was not performed by the Public Body or contravention of the Act.

8. Government Institution Response Time

- ▣ It is proposed the Acts be amended to reduce the government response time to access to information requests to 20 days from 30 days.

9. Record will be Published

- ▣ Presently, if the record will be published within 90 days, FOIP and LA FOIP allows for notice to be given to an Applicant that access is denied.
- ▣ It is proposed the Acts be amended to reduce the time period for publication to 20 days.

10. Manuals made Available

- ▣ It is proposed that a government institution (local authority) make their manuals available online, electronically or in paper.

11. Open Government

- ▣ Having to process access to information requests, including preparing fee estimates, is time consuming and expensive.
- ▣ A new section is proposed that would help clarify what type of government records should be proactively released outside of the formal application process.

12. Consultants and Contractors

- ▣ FOIP and LA FOIP presently do not have language similar to that found in HIPA dealing with information management service providers.
- ▣ It is proposed that a new section be introduced into FOIP and LA FOIP partly modeled on section 18 of HIPA but drafted so as to cover IT providers and other contractors.

13. Third Party Personal Information

- ▣ All provinces have such an exemption except Saskatchewan and Quebec.
- ▣ It is proposed to add a section providing an exemption for third party personal information.

14. Police, a Local Authority

- ▣ Saskatchewan and Prince Edward Island are the only provinces where the police are not bound by access and privacy legislation.
- ▣ It is proposed that municipal policing services be added as a local authority under LA FOIP.

15. Confirm or Deny Existence of Records

- ▣ It is proposed that FOIP be amended to limit which exemptions may be relied upon when invoking subsection 7(4).

16. WCB Amendment

- ▣ It is proposed that FOIP, HIPA and *The Workers' Compensation Act, 2013* be amended so that FOIP, not HIPA, will apply in full to records in the possession or control of the Workers' Compensation Board.

17. Providing Electronic Access

- ▣ It is proposed that Citizens have the option of receiving requested records electronically.

18. Cabinet Confidences

- ▣ It is proposed that FOIP be amended to reduce the time Cabinet confidences may be released from 25 to 15 years.

19. Duty to Document

- ▣ It is proposed that a duty to document be introduced into FOIP as presently one does not exist.

20. Delegation by the Head

- ▣ FOIP should include a provision that requires the appointment of an access and privacy coordinator for every government institution and clarify that the head may delegate to an employee, not just an officer.

Part II Amendments for Public Bodies

21. Frivolous or Vexatious Access Requests

- ▣ It is proposed that Saskatchewan introduce a provision in FOIP and LA FOIP similar to that used in Alberta that would enable the Commissioner to authorize a Public Body to disregard one or more access to information requests if repetitious, frivolous or vexatious.

22. Recovery of Personal Information

- ▣ It is proposed that an amendment to grant the necessary authority for public bodies to take the necessary action to retrieve personal information that may end up in the wrong hands.

23. Other Forms of Privilege not Captured

- ▣ Currently, only solicitor client privilege is covered by FOIP and LA FOIP.
- ▣ It is proposed that FOIP and LA FOIP be amended to provide for any type of legal privilege including litigation privilege and a section be introduced similar to that in Alberta.

24. Abandoned Requests

- ▣ It is proposed there be clarification as to when applications may be deemed abandoned.

25. Publicly Available

- ▣ In order to clarify when a government institution can obtain or use publicly available information, we have proposed language to clarify the point.

26. Counselor's Records

- ▣ LA FOIP presently does not clarify when records are in the possession or control of a municipality or its council members. A new subsection should be added to provide that clarification.

Part III Amendments to Assist the Commissioner

27. Grounds to Refuse to Conduct a Review

- ▣ It is proposed that the Acts be amended to include additional grounds to refuse a review, such as: the request does not involve the individual personally; there is another alternate dispute mechanism or professional body that could be engaged; there is insufficient evidence; the Public Body already responded adequately; or, a Report has already been issued on the subject.

28. Production of Documents

- ▣ It is proposed that the Acts be amended to require the Public Body to provide the Commissioner with the requested documents within 20 days.

29. Notice of Intention of Review

- ▣ Presently, the Acts require the Commissioner to give public bodies 30 days notice before commencing a review or investigation.
- ▣ It is proposed to delete the 30 day notice and allow the review or investigation to start right away.

30. Determine Own Procedures

- ▣ Presently the Acts are silent on the issue of establishing procedures for reviews or investigations.
- ▣ It is proposed to include language similar to that in the federal *Privacy Act*.

31. Cross-jurisdictional Investigations

- ▣ It is proposed that the Acts have a section similar to Alberta to enable information sharing with other oversight bodies when an investigation involves more than one jurisdiction.

32. Conflict of Interest of Commissioner

- ▣ In cases of conflict of interest of the Commissioner, it is proposed that the Acts be amended to authorize delegation to a staff member.

33. Issuing Reports

- ▣ There are instances such as early resolution, where discretion could be exercised to not issue a Report.
- ▣ It is proposed that the Acts be amended to say the Commissioner “may” issue a Report.

34. Response by the Head

- ▣ It is proposed that government institutions or local authorities respond to the Commissioner's Report in 20 days.

35. Appeals

- ▣ It is proposed that the Acts be amended to allow the Commissioner to intervene and make representations to the Court.

36. Offences Under the Act

- ▣ This amendment would allow the Commissioner to be a witness or provide documents where there is an offense under the Act.

37. Offence Provisions in FOIP and LA FOIP

- ▣ The offence language in the Acts should be amended to mirror that found in HIPA regarding employees caught snooping and contain a provision similar to a proposed amendment in Ontario's *Personal Health Information Protection Act* (PHIPA).

38. Privacy Impact Assessment (PIA)

- ▣ In order to ensure that privacy protective practices are embedded in program design at the beginning, we believe PIAs should be mandatory in some cases.
- ▣ It is proposed the Acts have a provision that makes it clear when this should occur.

39. IPC Authority to Disclose to Contractors

- ▣ FOIP should be clarified so that the Commissioner may appoint and disclose confidential information to contractors when necessary.

Part IV General

40. Statutes Subject to FOIP and LA FOIP

- ▣ It is suggested there be a careful review of the present list of exemptions and, where an Act or a part of an Act is exempted, consideration be given to narrowing the exemption.

41. Five Year Review

- ▣ In order to ensure that the Acts are reviewed regularly, it is proposed the Acts be amended to make it mandatory every five years.

42. Saskatchewan's Private Sector Employees

- ▣ It is proposed that legislation be introduced to provide protection to employees in the private sector similar to the protection employees have in the public sector.

43. Consolidation of FOIP and LA FOIP

- ▣ It is proposed the Acts be merged to eliminate confusion as to which Act applies and to address discrepancies between the two.

44. Expand Government Reporting Requirements

- ▣ It is proposed that an amendment is made to FOIP that would require government institutions to expand present reporting requirements in its Annual Report to include the number of privacy breach complaints received by each government institution that fiscal year.

45. MLAs' and Ministers' Offices Bound by FOIP

- ▣ FOIP only applies presently to government institutions. It is proposed that the privacy provisions of FOIP be extended to offices of MLAs and Ministers.



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Questions

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