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EMERGING TRENDS
IN MUNICIPAL LAW

The Times Are a Changin' (Or a Complete Unknown)

The New Access to Information and
Privacy Legislation in Alberta



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Bill Status

01 ***FOIP'd No More***
Bills 33 and 34 to Replace FOIP Act

02 **BILL 34**
Access to Information Act

03 **BILL 33**
Protection of Privacy Act

04 **Questions**



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who am
I?



FOIP'd No More

After “several years of engagement with Albertans, public bodies, and the Office of the Information and Privacy Commissioner”

1999:
Freedom of Information and Protection of Privacy Act introduced

NOVEMBER
2024:
Government announced replacement
(Bill 33 + Bill 34)

Late Spring 2025:
New legislation to come into force, with regulations



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BILL 34: *Access to Information Act*



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Information and Privacy Commissioner:

“my view is that there are **many grounds for concern** regarding Bill 34’s impact on Albertans’ access to information rights and more generally the functioning of the access to information system in Alberta”

Access to Information: Requests

Public body may disregard access to information request (S. 9.1)

- Public body has **discretion** to disregard public access requests
- Shift of the decision making from the Commissioner
- **Overly broad and incomprehensible**

Access to Information: Requests

5 CIRCUMSTANCES WHERE PUBLIC BODY MAY DISREGARD REQUEST:

1. **unreasonably interfere with the operations of the public body** (repeated requests)
2. **abusive, threatening, frivolous, or vexatious**
3. Has already been provided/available to the public
4. **Public body does not have information that is sufficiently clear** to enable them to locate and identify the record within a **reasonable time with reasonable effort**, or
5. **otherwise overly broad or incomprehensible**

Timeline Extensions [s. 16]

The authority for extending the time to respond rests solely with the head of a public body and there is no limit on the length of extensions

- 30 additional business days (16(1))
- Beyond if reasonable (16(2) to (4))
- Automatic extensions in times of **emergency, disaster or other unforeseen events**

Exceptions to Disclosure

- **Some of the broadest exceptions to executive level government transparency**
 - vs. similar Canadian or international legislation
- **Virtually all communication between political staff and executive council members**
 - “political staff” can be freely defined in regulations

Exceptions to Disclosure

Section 25 – disclosure harmful to economic or other interests of public body

Blanket Cabinet privilege exemptions – Section 27(1) - “any record submitted to or prepared for” “or created by or on behalf of”

Section 27(2) – exempts background and factual information as part of deliberations exception

Exceptions to Disclosure

Workplace Investigation exemptions – Section 24

- Can refuse to disclose if “reasonably expected” to
 - a) interfere with, prejudice or otherwise harm a workplace investigation, or
 - b) cause harm to a witness or third party, or prevent a witness from coming forward as a witness, in a workplace investigation

Exceptions to Disclosure

Advice from officials exemption – Section 29 – Carves out background factual information from the right of access

Requests for Records

No requests by public body to another public body (s. 8)

- Purpose of provision unclear

Records available without requests

- Proactive or routine disclosure
- Limits right to request access to information

Requests for Review

- Must be completed within 180 business days, or no more than 360 business days with extension
- No power to compel production of privileged records or political communications


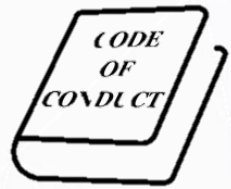


Impact on Municipalities

Requests – Governed by new *Access to Information Act*

- **Public body has discretion to disregard public access requests**
- **Process changes to provide public bodies with more time and flexibility**
 - Business days versus regular days

Impact on Municipalities

Implications for:

- Workplace investigations 
- Councillor Code of Conduct investigations 
- Whistleblower complaints 
- Basis for in-camera meetings
- Fees (will they change in Regulation??) 

Etc.!



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BILL 33: *Protection of Privacy Act*

Bill 33: Privacy by Design

- Privacy as the default
- Proactive rather than reactive

Practically - public bodies *must* consider privacy implications of personal information **when they do business make changes to their programs and systems**

Personal Information

Revised definition:

- Information about an identifiable individual
- Does not include employee information where provided on behalf of employer in capacity as employee
- Gender identity and sexual orientation

Collection of PI

- **Without Consent [s 5(1)]:**
 - Delivering a common or integrated program or service
 - Where public bodies are working collaboratively with one another
- **Previous notice of collection [s 5(4)]**

Automated Decision Making [s 5(2)(d)]

Notification:

- **Automated tools** to generate content, or make decisions, recommendation or predictions
- **AI programs(?)**
- Regulations re content of notice

Breach Reporting [s 10]

MANDATORY where loss, unauthorized access to or disclosure:

- **Real risk of significant harm**
- **Notice without unreasonable delay:**
 - Individual
 - Commissioner
 - Minister

Sale of PI [s 11]

No selling of personal information by a public body

- In any circumstance, including **marketing and advertising**

Data Rules [s 12]

A public body may **use personal information** only to the **extent necessary** to enable the public body to carry out its purpose in a **reasonable manner**

- **Anonymized, de-identified information** to be used where possible

Disclosure of Information [s 13]

Notable additions:

- Workplace Investigations
- Data matching

Data Matching [s 17]

Data matching = syncing up more than one data source about an individual to get a better view of the whole of their personal information.

- Where delivering or evaluating a service.
- Security arrangements

Data Matching [s 17]

“Public bodies will have clear rules for **when and how to share information** with each other to provide a common or integrated service, so Albertans don’t have to repeatedly provide their information”

- **EXAMPLE:** Emergency - eligibility for supports that are provided by various public bodies
Retention, Disclosure, Protection

Non-Personal Data [s 22]

Derived or anonymized from personal information

Rules surrounding the:

- Creation
- Use
- Disclosure
- Protection

Privacy Management Programs [s 25]

Mandatory to document policies and procedures

- Available upon request
- Promote compliance
- **One year** to establish and implement a privacy management program

Privacy Impact Assessments [s 26]

PIA - mandatory for all programs and operations re collection, use and disclosure of personal information

- Proactive tool - **compliance** and **identify** potential privacy risks
- **Mitigation** strategies for privacy risks

Reviews and Inquiry [s 38]

Attempt resolution with Public Body

- **If the public body decides to respond – 30 days**
- **Deadline for filing a review**
 - 60 days from response
 - 90 days from complaint
- Mediation —→ Inquiry

OIPC Deadlines

Inquiry must be completed:

- **180 business days** after receiving Request for Review
- **Extension** of not more than **180 business days** (360 total)

Offences

Higher fines for offences

- Individual - **Up to \$125,000 to \$200,000**
 - Previously not more than \$10,000
- Public body – **Up to \$750,000 to \$1,000,000**
 - Previously not more than \$500,000
- Higher maximums for data derived or non-personal information

Impact on Municipalities

Implications for:

- **New policies and programs must be in place within one year (PMPs and Privacy by Design)**
- **Consider when PIAs are necessary**
- **Mandatory breach notification**
- **Be aware of data rules and implications of new technologies**

Impact on Municipalities

Regulations to come! Spring 2025

FOIP Act applies for now...





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QUESTIONS?

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