



## Frequently Asked Questions for Municipalities

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*The Freedom of Information and Protection of Privacy (FOIP) Act aims to strike a balance between the public's right to know and the individual's right to privacy, as those rights relate to information held by public bodies in Alberta.*

### LOCAL GOVERNMENT BODIES

1. **What is a "local government body" under the FOIP Act?**
  - The Act defines a local government body in **section 1(i)**.
  - The definition includes municipalities, improvement districts, special areas, regional services commissions, housing management bodies, public libraries, police services, police commissions, drainage and irrigation districts, Metis settlements, and certain boards, committees, etc. of these local government bodies.
  
2. **Which local government boards, committees, etc. are subject to the FOIP Act?**
  - **Section 1(i)(xii)** of the FOIP Act sets out the test for whether a local government agency is subject to the FOIP Act.
  - To determine whether an entity is covered, ask the following questions:
    - Is the entity a board, committee, commission, panel, agency or corporation?
    - Is it created or owned by a local government body?
    - Are all of its members/officers appointed or chosen by the local government body?
  - If the answer to all three questions is "yes", then the entity is subject to the FOIP Act.
  - EPCOR and ENMAX and their gas or electric subsidiaries are specifically excluded from the scope of the Act.
  
3. **Are Community Lottery Boards subject to the FOIP Act?**
  - Yes. Community Lottery Boards are covered under Alberta Gaming. Requests for records should be referred to the FOIP Coordinator for Alberta Gaming.

### RECORDS

4. **What is a "record"?**
  - **Section 1(q)** of the FOIP Act defines a record as "information in any form and includes notes, images, audio-visual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other

information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records”.

- It includes handwritten notes and electronic correspondence or messages, which are in the custody or control of the municipality.
- Not all records need to be kept by the public body. You can routinely discard transitory records, those that have only short-term, immediate or no value to your organization and that you won't need again in the future. For more information about transitory records, see *Official and Transitory Records: A Guide for Government of Alberta Employees* ([www.im.gov.ab.ca](http://www.im.gov.ab.ca)).
- If the information in a record will have some future administrative, financial, legal, research or historical value to the public body, then you should file the record. For example, e-mail messages that record approvals, recommendations, opinions, decisions or business transactions have future value, and are not transitory and should be filed. You can print and file them in your manual filing system or store them in an electronic filing system.

#### **5. What records of municipalities are subject to the FOIP Act?**

- All records that are in the custody or under the control of the municipality are subject to the FOIP Act (**section 4(1)**) unless a specific exclusion applies.
- A municipality has custody of a record when the record is in the possession of the municipality. This includes situations where the records of a third party are kept on the premises of the municipality.
- A record is under the control of a municipality when it has the authority to manage the record, including restricting, regulating and administering its use, disclosure and disposition.

#### **6. How long should a municipality keep its paper/electronic records?**

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

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

- The same records management principles for paper files/records should also apply to e-mail documents. Transitory e-mails may be deleted.
- How or where the e-mail documents are retained will depend on the municipality's records and information management program standards, and whether it has the capability of electronically filing documents required for future use. If the municipality does not have that capability, records should be printed and filed in the paper filing system.

**8. Who is an "employee" under the FOIP Act?**

- The definition of "employee" in the FOIP Act includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body (**section 1(e)**). This means that volunteers, students on work experience arrangements, contractors, and appointed board members have the same responsibility to protect privacy as other employees of the municipality.

**9. Are records of contractors subject to the FOIP Act?**

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

**10. Are records of elected officials of municipalities excluded from the FOIP Act?**

- Personal or constituency records of a council member are excluded from the Act (**section 4(1)(m)**). This exclusion is intended to cover:
  - records such as private correspondence of an elected official that has not been sent or received by the official in his or her capacity as a council member but which may be maintained in his or her office for convenience.
  - records relating to the election campaign of a council member (other than those records required to be submitted to the authority governing the election).
  - records relating to the private business activities of a council member.
- Records dealing with the business of the municipality are covered by the Act even if they are stored at a councillor's home.

**11. Who is responsible for FOIP within a municipality?**

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

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

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

**13. Does a public body have any control over how records that have been released in response to a FOIP request are used by the applicant?**

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

## COUNCIL RECORDS

**14. How should municipalities handle letters from residents that become part of the council agenda packages forwarded to council members?**

- Letters from residents normally include personal information, such as name, address, phone numbers, and possibly opinions and other personal information. In deciding whether to disclose the personal information of individuals at public council or committee meetings, municipalities need to balance the dual objectives of open government and protection of privacy.
- Under section 197 of the *Municipal Government Act* (MGA), meetings of a council or a council committee must be conducted in public, except where there is authority to hold the meetings in the absence of the public. Under section 198 of the MGA, the public has a right to be present at council and committee meetings that are conducted in public. Given the public nature of council and committee meetings, an individual writing to a councillor or to the administration of a municipality may have a reasonable expectation that their correspondence, including their personal information, could be disclosed at a public council or committee meeting.
- If this is the practice of the municipality, then notice of this practice should be made available to the public. For example, notice may be placed in a brochure and on the municipality's web site, or in publications the public may refer to when looking up council member contact information.

- Sometimes individuals will send in letters containing sensitive personal information, such as information about the health of family members, vacation plans or financial circumstances. When it is not clear that the writer expected the information to be made public, the municipality should contact the individual and confirm that it was their intention that the information be disclosed to the public. Alternatively, a severed record or summary of the information inquiry or complaint could be prepared for use at the council meeting.
- Where the disclosure of such a letter would clearly be an invasion of the author's personal privacy but the personal information is needed by councillors to fully inform their decision-making, the matter could be discussed in a portion of the meeting that is closed to the public. In that case, the letter would not be attached to or distributed as part of the agenda package.

**15. How should municipalities handle records containing personal information of individuals that are used during in camera meetings?**

- Section 197(2) of the MGA authorizes a council and its committees to close all or part of their meetings to the public if a matter to be discussed is within one of the exceptions to disclosure contained in **Division 2 of Part 1** of the FOIP Act. One of the exceptions includes disclosures of personal information that would be an unreasonable invasion of a third party's personal privacy (**section 17(1)**).
- The information of an identifiable individual must be discussed in a closed meeting if the disclosure would be an unreasonable invasion of privacy to have the discussion with members of the public present.
- Any motion arising from those discussions must then be voted upon in public. Consistent with the principle of open government, a municipality should try to make public as much information as possible about the general nature of the matter considered without disclosing the personal information of the individual in question.
- See [question 18](#) for further information about in camera meetings.

**16. Is a letter sent by a ratepayer to a councillor that is not brought to the attention of the council and does not form part of council records, subject to the access provisions in Part 1, Division 2 of the FOIP Act?**

- **Section 4(1)** of the Act says that the Act applies to all records in the custody or under the control of a public body. Subsection (m) excludes personal or constituency records of an elected member of a local public body and subsection (n) excludes personal records of an appointed or elected member of the governing body of a local public body.
- This section has yet to be considered by the Information and Privacy Commissioner in an Order.
- Using the tests set out in *FOIP Bulletin #6, "Records of Elected and Appointed Officials of Local Public Bodies"*, this record would be considered a "personal record" of the councillor if it did not in any way relate to the business of the municipality but rather related to the personal business dealings of the councillor. The record would be considered a "constituency record" of the councillor if it dealt with the political activities of the councillor, such as election contributions or campaign issues.

- If the record could not be considered to be a “personal” or “constituency” record of the councillor, the municipality would have to determine whether it was in its custody or under its control. A record may not be in a municipality’s custody or control if
  - the record was not deposited with the council or the municipality;
  - the municipality had no power to compel the councillor to produce the record even when referred to in a council meeting;
  - the municipality had no authority to regulate or dispose of the record;
  - the record was referred to as part of the councillor’s mandate to represent the constituent and not as a basis for action by the municipality; and
  - the record was not integrated with municipality records in the office of the councillor.

(These factors were taken from Ontario IPC Order M-813).

**17. How should additional sets of council records, such as agendas, supporting documents and minutes retained by council members be treated?**

- Councillors should understand that these records are subject to the FOIP Act, regardless of where the records are located.
- Municipalities should develop a policy regarding the retention and disposition of these records. The policy could state that these types of records are retained by councillors until the formal minutes produced by council have been approved and then returned for confidential recycling/shredding; or that they be retained by councillors for a specified period of time (e.g. one year) and then returned for confidential recycling/shredding.

**18. Can municipal councils meet in camera, that is, in the absence of the public?**

- On October 1, 1999, section 197(2) of the MGA was repealed, and replaced with the following, “councils and council committees may close all or part of their meetings to the public if a matter to be discussed is within one of the exceptions to disclosure in **Division 2 of Part 1** of the *Freedom of Information and Protection of Privacy Act*.”
- Councils and their committees can make a motion to go in camera when the substance of their deliberations relate to the matters covered by the exceptions to disclosure in the FOIP Act, **sections 16 to 29**. For example, a discussion regarding the employment of an individual should be held in camera to protect the privacy of that individual.
- There is no requirement to take notes or minutes during in camera sessions. If notes have been prepared, they may be requested as part of a FOIP request. The municipality has the discretion to refuse to disclose these notes under **section 23** of the FOIP Act, local public body confidences.
- The council minutes should show that a motion was made to go in camera and then another to return to the open meeting so that **section 23** may be applied.

## **EMPLOYEE AND COUNCILLOR INFORMATION**

**19. If a municipality receives a FOIP request for the salaries of all employees and councillors, does the information have to be released?**

- Under section 217(3) of the *Municipal Government Act* (MGA), the salaries of councillors, the chief administrative officer and designated officers of the

municipalities must be released on request. This section prevails over the FOIP Act.

- Section 217(3) of the MGA remains in force. Section 216, the remainder of section 217 and section 218 of the MGA were repealed on October 1, 1999.
- For the remaining municipal staff, under **section 17(2)(e)** of the FOIP Act, disclosing the salary range and discretionary benefits of employees is not an unreasonable invasion of privacy. The exact salary could be released only with an employee's consent.

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

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

**21. Can the municipality disclose personal information of employees, such as salary, benefits, or home address, to council members?**

- Personal information of employees can be disclosed to a council member if the information is necessary for the performance of the duties of the council member (**section 40(1)(h)** of the FOIP Act).
- Only the information which the council member needs to know can be disclosed (**section 40(4)** of the FOIP Act).
- For example, in a municipality with a small number of employees, council members may need to receive information on individual employees' salaries as part of the budget process, depending on how the budget is normally prepared. In a larger municipality, budget decisions may be made on summary information, so in that case individual salaries would not need to be disclosed.

**22. Can a municipality verify an employee's salary to a lending institution or finance company, where the employee has applied for credit?**

- Yes, but only with the employee's consent. Financial information of an employee is the employee's personal information and so consent is required before you can disclose it.

**23. Can a municipality disclose and/or verify the employment status and home address of an employee to a collection agency?**

- A municipality can only confirm whether an individual is an employee.
- The disclosure of a home address would be an unreasonable invasion of privacy, without consent.

**24. If a municipality receives a FOIP request for a travel expense claim of an employee or councillor, does the information have to be released?**

- Expense claims have frequently been the subject of FOIP requests.
- Under **section 17(2)(e)** of the FOIP Act disclosing employment responsibilities of employees is not an unreasonable invasion of privacy. Travel for business purposes is part of an employee's employment responsibilities.
- Expense claim records can also be released if **section 17(5)(a)** of the FOIP Act applies, where the disclosure is desirable for the purpose of subjecting the activities of the municipality to public scrutiny. The records would be severed, for example, to withhold employee's credit card numbers or home address, and the names of third parties.

## FEES

**25. Can municipalities charge fees for handling FOIP requests?**

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

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

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

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

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



**28. Should municipalities collect GST on FOIP fees?**

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

**29. Should municipalities follow the FOIP fee schedule when releasing records outside of the FOIP Act?**

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

## OPERATING PROGRAMS

**30. Can municipalities collect the personal information they need for the property assessment roll?**

- Yes. Under **section 33(a)** of the FOIP Act, a municipality can collect personal information that other legislation authorizes it to collect.
- The *Municipal Government Act* (MGA) sets out what information must be collected for assessment purposes. Section 303 of the MGA sets out specific information that must be included in the assessment roll.

**31. Should municipalities make the assessment roll available for inspection?**

- Yes. The MGA, section 307, allows individuals to "inspect the assessment roll during regular business hours on payment of the fee set by the council."
- One suggestion is to maintain the complete version of the assessment roll, including owners' names, addresses and phone numbers, in the municipal office. This copy would be available for inspection during office hours. Another version of the roll, containing the property information but not the personal information, could be made more widely available.

**32. Can a municipality release information it receives from companies regarding notices of construction for access roads, well-sites, etc.?**

- If the information requested relates to an application for a development permit or subdivision approval, then refer to [questions 55 to 58](#) below.
- The records requested should be reviewed to determine whether any of the exceptions to disclosure in the FOIP Act would apply, especially **section 16**, and then all or part of the records would be released based on this review.
- If the notice refers to an individual rather than to a company, personal information such as home phone number or home address, if different than the location of the work site, should not be disclosed without the individual's consent.
- A municipality may be asked regularly for notice information. If this is the case, a municipality could compile and maintain a list of notices, including the names of the companies and the legal land descriptions referred to in the notices. This should not be done when the affected companies have an expectation of confidentiality regarding the business information in the notice. To ensure that companies are aware of this practice, municipalities should provide notice of the intended use of this information.

**33. Can a municipality disclose the address of a person to a bailiff or private investigator?**

- All requestors have the same status under the FOIP Act, whether they are bailiffs, private investigators, companies collecting on overdue accounts, individuals collecting on a judgment, bailiffs seizing property, or process servers wishing to serve court orders, warrants or other documents on individuals.
- **Section 17(4)(e)** of the FOIP Act says that disclosure of information gathered for the purpose of collecting a tax is presumed to be an unreasonable invasion of privacy. A municipality should not disclose addresses from the assessment roll.
- In *Order 2000-024*, the Information and Privacy Commissioner found that the names and mailing addresses on the City of Calgary's assessment roll could not be disclosed.
- However, anyone may ask to inspect the assessment roll under section 307 of the MGA and may locate an address this way.
- Individuals requesting addresses may be referred to the Land Titles Office. The Land Titles Office will provide a legal description of land held by an individual if the person requesting the information is entitled to register or has registered certain instruments against a debtor's land. These are a Writ of Enforcement or a court order permitted by legislation or permitted by the terms of the order to be registered.

**34. Can a Real Property Report be released to a prospective purchaser of property, to a new owner or to anyone else?**

- The records requested should be reviewed to determine whether any of the exceptions to disclosure in the FOIP Act would apply and then all or part of the records would be released based upon the application of the Act.
- It is unlikely that the report on a residential property would contain personal information or commercial or technical information under **section 16** of the Act.

**35. Can a Fire Prevention Inspection Report, prepared by a municipality, be released upon request to anyone?**

- Fire Prevention Inspection Reports may be prepared at the request of a property owner or as part of a municipality's Quality Management Plan.
- Section 63(1) of the *Safety Codes Act* (SCA) applies to the release of these reports since they are created pursuant to the Alberta Fire Code which is considered to be an enactment under the SCA. That section imposes a duty on anyone administering the SCA to preserve the confidentiality of information and documents created for the purposes of the Act, except in certain circumstances. One of those circumstances would be disclosure of a Report with the consent of the owner.
- If the Inspection Report relates to a building or other structure owned or leased by a municipality, provided any personal information of non-employees is severed, or their consent to the release of the information is obtained, the Inspection Report could be released without a FOIP request.
- If the Inspection Report relates to a building or other structure that is not owned or leased by the municipality, but is inspected as part of the municipality's Quality Management Plan, the consent of the owner of the

building or structure would be required before the report could be released, unless there was a court order or the disclosure was authorized by another act. In addition, any personal information of non-employees should be severed, or their consent to the release of the information obtained.

**36. What information can a municipality release on a tax certificate?**

- Section 350 of the MGA authorizes the release of tax arrears information. It says that on request a municipality can release the amount of taxes imposed and the amount of taxes owing in the current year, and the total amount of tax arrears.
- The MGA is silent on whether the name of the property owner is to be released. Any disclosure of personal information under FOIP should be limited to "the extent necessary to enable the public body to carry out the purposes in a reasonable manner (**section 40(4)** of the FOIP Act). Normally the name of the property owner would not need to be disclosed.

**37. Can municipalities prepare rural maps that contain the names of land owners?**

- Often rural maps contain the first initial and last name of land owners, legal land descriptions, and the location of houses. These maps are prepared for use by municipal staff, such as emergency services, utilities, and others who need to locate owners. Maps are often made available to the public as well.
- Many municipalities are continuing to produce these maps since they believe the use of the owners' names on the maps is not an unreasonable invasion of personal privacy under **section 17** of the FOIP Act. The disclosure would be permitted under **section 40(1)(b)** of the FOIP Act once the municipality makes the decision. Unless there is an investigation of a privacy complaint by the Commissioner and the resulting report recommends removing the names, municipalities may decide to continue to produce the maps.

**38. Can a municipality put the complete cemetery record, such as names, dates of births and deaths, and locations of burial sites, on a web page?**

- This information is personal information of individuals. The disclosure would be an unreasonable invasion of privacy if the individuals have been dead for less than 25 years (**section 17(2)(i)** of the FOIP Act).
- Disclosures of this information should be considered on a case-by-case basis.

**39. Can a municipality disclose personal information to Alberta Justice Maintenance Enforcement Program?**

- Yes. **Section 40(1)(y)** of the FOIP Act permits the disclosure of personal information about individuals for the purposes of enforcing a maintenance order under the *Maintenance Enforcement Act*. If this is the basis for requesting the information, the official for Maintenance Enforcement would have to provide proof of identity and specific authority under which the information is being requested.
- Municipalities should only disclose the personal information necessary to the enforcement process relating to the order.

## ASSESSMENT ROLL INFORMATION

- 40. Can municipalities use the personal information on the assessment roll for other purposes related to the operation of the municipality?**
- Yes. Under **section 39(1)(a)** of the FOIP Act, a municipality may use personal information for the purpose for which the information was collected or a consistent purpose.
  - The name and mailing address of the property owner was collected for the purpose of operating the municipality, including compiling the assessment roll. This information may be used for other purposes related to the operation of the municipality, such as providing services and utilities.
  - When the personal information is collected directly from an individual, notice should be given about how their personal information may be used, as required by **section 34(2)** of the FOIP Act.
- 41. Can a municipality sell the personal information on the assessment roll to external groups or companies, such as marketers?**
- No. In *Order 2000-024*, the Information and Privacy Commissioner found that the names and mailing addresses on the assessment roll could not be disclosed outside of the municipality.
  - The Commissioner found that the personal information was collected for the purpose of determining tax liability and/or for collecting a tax. Therefore **section 16(2)** of the FOIP Act applies to the personal information, and the information must not be disclosed in responding to a FOIP request. This is a mandatory exception to disclosure in the FOIP Act.
  - When the information is requested, without a FOIP request, the information could only be disclosed under **section 40** of the FOIP Act. The most likely section is **40(1)(b)**, if the disclosure would not be an unreasonable invasion of privacy. Under **section 17(4)(e)** of the FOIP Act, a disclosure of personal information collected for the purpose of collecting a tax is presumed to be an unreasonable invasion of privacy.
  - However, if the property owners' names and mailing addresses were removed, the remaining information on the assessment roll could be disclosed.
- 42. If a municipality is asked to provide the address or legal description of property owned or leased by an individual and that information is part of the assessment roll, can the address of the individual be disclosed?**
- The disclosure of the names and mailing addresses of property owners for these purposes would likely be an unreasonable invasion of the property owner's personal information under **section 17(4)(e)** of the FOIP Act. If a FOIP request was submitted, the municipality would have to refuse to disclose to an applicant information about a third party that was collected for the purpose of determining tax liability or collecting a tax (**section 16(2)** of the FOIP Act).
  - The Information and Privacy Commissioner, in *Order 2000-024*, upheld the City of Calgary's decision not to disclose the names and mailing addresses of property owners in the assessment roll in response to a FOIP request.
  - Note that an individual could ask to inspect the assessment roll, and in doing so would be able to identify the individual's mailing addresses and legal description of property. The MGA requires that municipalities provide access to the assessment roll during office hours on the payment of a fee set by council.

Being allowed to inspect the roll does not mean that a complete copy of the roll, containing names and contact information, can be disclosed by the municipality.

**43. If a gas drilling company gives a municipality a list of legal land descriptions and asks for the names and mailing addresses of property owners from the assessment roll, can the municipality provide the information?**

- The Energy and Utilities Board may require a company drilling a sour gas well to prepare an Emergency Response Plan containing the names and addresses of affected residents in the vicinity of the sour gas well.
- The personal information may be disclosed when there are compelling circumstances affecting anyone's health or safety, for example because the activity represents a potential hazard or safety hazard. The disclosure of the requested information would not be an unreasonable invasion of personal privacy under **section 17(2)(b)** of the FOIP Act. A written notice of the disclosure should be given to the third party.
- A municipality should ask the requestor to put their request in writing, including the reason for requesting the information, i.e. to prepare an Emergency Response Plan for a sour gas well drilling operation. The municipality could then make the disclosure for affected residents under **section 17(2)(b)**, and would need to provide a written notice to the residents that it has done so.
- A sample notice letter can be found in Appendix 3, Model Letter R, of the *FOIP Guidelines and Practices* manual.

**44. If a municipality is given a list of legal land descriptions and is asked to provide the names and mailing addresses of property owners from the assessment roll, can it do so?**

- The disclosure of the names and mailing addresses of property owners is normally an unreasonable invasion of the property owner's personal information (**section 17(4)(e)** of the FOIP Act). If a FOIP request was submitted for the information, the municipality would have to refuse to disclose to an applicant information about a third party that was collected for the purpose of determining tax liability or collecting a tax (**section 16(2)**) of the FOIP Act.
- Note that an individual could ask to inspect the assessment roll, and in doing so may be able to identify the individual's mailing addresses and legal description of property. The MGA requires that municipalities provide access to the assessment roll during office hours on the payment of a fee. Being allowed to inspect the roll does not mean that a complete copy of the roll, containing names and contact information, can be disclosed by the municipality.
- If there is any requirement for notification of property owners under another statute or regulation of Alberta or Canada (e.g. an environmental protection or energy statute or regulation), then **section 40(1)(e)** or **(f)** of the FOIP Act would permit disclosure of the mailing address of the owner and/or legal description of the property.

**45. Can a municipality disclose a copy of the assessment roll or information on the assessment roll to a school board?**

- Yes. Under section 167 of the *School Act*, a municipality is required to provide a copy of the whole or any part of the roll to a school board, on request. This disclosure would be in accordance with **section 40(1)(e)** of the FOIP Act.

- Although the whole roll may be disclosed for this purpose, the municipality should consider disclosing only the personal information that is necessary to carry out that purpose.
- 46. Can a municipality disclose information on the assessment roll to an assessed person who is appealing the assessment of their property?**
- Yes. Section 299(1) of the MGA allows an assessed person to access sufficient information to show how their own property was assessed. This would include information on how the property was first assessed and how the property compares with other similar properties.
  - In addition, under section 300 of the MGA, an assessed person may ask the municipality for a summary of any assessed property in the municipality and the municipality must comply with the request if it is satisfied that necessary confidentiality will not be breached.
  - In most appeal situations, a municipality would not have to disclose another owner's personal information to carry out this purpose and so would only disclose the property information.
- 47. Can real estate agents and/or appraisers request legal land descriptions, parcel size/dimensions, assessment taxes, etc., on behalf of their clients when consent from the land owners is implied by virtue of the agent or appraiser working for their client?**
- When the address of the land owner's property is provided, the disclosure of only the property information (i.e. legal land description, parcel size and dimension, assessment and taxes) by the municipality would not be an unreasonable invasion of privacy. This is not personal information.
  - Note that real estate agents and appraisers could ask to inspect the assessment roll, and in doing so may be able to identify the individual's name. The MGA requires that the municipalities provide access to the assessment roll during office hours on the payment of a fee. Being allowed to inspect the roll does not mean that a complete copy of the roll, containing names and contact information, can be disclosed by the municipality.
- 48. Can a municipality provide information on the assessment roll to 911 operators and ambulance service providers?**
- Yes. Under **section 39(1)(a)** of the FOIP Act, a municipality may use personal information for a use consistent with the purposes for which the information was collected, including operating the municipality. The information on the roll can be used for purposes related to the operation of the municipality such as the provision of emergency services by contracted providers.
  - When the personal information is collected directly from an individual, notice should be given to residents as to how their personal information may be used and disclosed, as required by **section 34(2)** of the FOIP Act.
- 49. Can a municipality provide information on the assessment roll to municipal utility staff, or the utility's contractors?**
- Yes. Under **section 39(1)(a)** of the FOIP Act, a municipality may use personal information for a use consistent with the purpose for which the information was collected. In addition to using the information for the purposes of collecting

property taxes, the information on the roll can be used for purposes related to the operation of the municipality such as the provision of utility services.

- When the personal information is collected directly from an individual, notice should be given to residents as to how their personal information may be used and disclosed, as required by **section 34(2)** of the FOIP Act.

**50. Can a municipality provide the names and addresses of their residents (from the assessment roll) to recreation boards created by a municipal bylaw for the purpose of sending notices about upcoming recreation board events? Could the municipality charge a fee for the staff time involved in retrieving the names and addresses and printing address labels?**

- If the recreation board was created by a municipal bylaw with members appointed in accordance with that bylaw, the municipality is using this vehicle to provide for the recreational and social activities of its residents. The programs and activities offered by the board would likely be considered to be programs and activities of the municipality. The disclosure of names and addresses of the residents would be a consistent use of the personal information since it would have a reasonable and direct connection to the collection (for assessment purposes and for the operation and administration of the municipality's programs) and would be necessary to operate recreational programs (under the mandate of the municipality).
- For this purpose, the municipality could provide the names and addresses of the ratepayers within the geographic area served by a recreation board. The municipality should put clear limits on the use of the mailing list and indicate that it reserves the right to discontinue providing the mailing list to the board if it learns that the list has been used or disclosed for other purposes.
- Since the request for disclosure of the personal information is not a FOIP request, the municipality could charge fees set in the bylaw for such services.
- For recreation boards that are not created by bylaw, or for which no special tax has been levied, the municipality could offer to do the mailout for the recreation board if they determined that an activity of the board was a consistent use of the information collected. The municipality could not disclose the personal information to these recreation boards.

**51. Can a municipality disclose information to a public health inspector?**

- Public health inspectors may ask for the name and contact information of a business license holder such as a restaurant. The disclosure of business license information, even if the business is owned by an individual, would not be an unreasonable invasion of privacy under **section 17(2)(g)** of the FOIP Act and may be disclosed.
- Public health inspectors may also ask for information on a particular property. Normally contact information may not be disclosed. In *Order 2000-024*, the Information and Privacy Commissioner found that the names and mailing addresses on the assessment roll could not be disclosed outside of the municipality.
- Note that the inspector could ask to inspect the assessment roll, and in doing so may be able to identify the individual's mailing addresses and legal description of property. The MGA requires that municipalities provide access to the assessment roll during office hours on the payment of a fee. Being allowed to

inspect the roll does not mean that a complete copy of the roll, containing names and contact information, can be disclosed by the municipality.

- If the inspector is carrying out an investigation of a complaint, or other law enforcement activity under an enactment, the municipality may disclose the information under **section 40(1)(q)** of the FOIP Act. The municipality may want to require the inspector to make the request for information in writing, for example, by completing the Law Enforcement Disclosure Form (from the *FOIP Guidelines and Practices* manual).

**52. Can a municipality disclose names and addresses of new residents (from the assessment roll or from applications for utilities) to organizations like Welcome Wagon?**

- Not without the consent of the residents. In *Order 2000-024*, the Information and Privacy Commissioner found that the names and mailing addresses on the assessment roll could not be disclosed outside of the municipality. See also [question 41](#).

**53. Can a municipality disclose personal information about a resident to Canada Customs and Revenue Agency (formerly known as Revenue Canada)?**

- Yes. **Sections 40(1)(e)** and **(f)** of the FOIP Act allow for disclosure to comply with another Act of Alberta or Canada, such as the *Income Tax Act*. That Act authorizes the collection of personal information by employees of Canada Revenue Agency ("CRA") for certain purposes. For example, section 231.1(1) of that Act authorizes an inspection, audit, or examination of records of any person (including a municipality) that relate or may relate to information that is or should be in the books or records of a taxpayer or to any amount payable by the taxpayer under the Act.
- If section 231.1(1) were the basis for the request for information, the individual making the request would need to demonstrate that he or she is a duly authorized employee of CRA. CRA has advised that requests to examine records pertaining to taxpayers, under the authority of the *Income Tax Act*, typically come from Collections Officers or their superiors, during site visits. To verify identity, the municipality can request the Collections Officer to provide a business card or show his or her identification card.
- The *Income Tax Act* also allows CRA to require the production of information and documents by written demand under section 231.2. Information may be disclosed in response to these requests under the same provisions of the *Freedom of Information and Protection of Privacy Act*, as set out above.

**54. Can the records related to assessment reviews dealt with by assessment review boards be released to anybody upon request?**

**Submissions:**

- The municipality who issued the assessment notice, must be provided with a copy of the complaint about the assessment within 30 days of receipt by the designated officer. The municipality, the complainant and any other person affected by the assessment must be given notice of the review hearing.



**Minutes/Records of Proceedings:**

- If there are records of the proceedings of assessment review boards, they must be released in accordance with any policies of the municipality.

**Decisions:**

- Section 469(1) of the MGA requires that a decision of an assessment review board and the reasons for a decision (if requested at the time of the hearing) must be sent to all persons who were required to have notice of the hearing. If the decision contained personal or business information, then **sections 16 and 17** of the FOIP Act would have to be applied to determine what information could be released. Note that under **section 17(4)(e)**, disclosure of information gathered for the purpose of collection of a tax is presumed to be an unreasonable invasion of privacy.
- If a decision of an assessment review board is appealed to the Municipal Government Board, as a matter of practice, the contents of the appeal file could be released by the board to anyone upon request.

## PLANNING RECORDS

**55. Can the records related to development applications and subdivision approvals dealt with by municipal planning commissions and development and subdivision authorities be released to anybody upon request?**

**Applications for Development Permits or Subdivision Approval:**

- Application files may contain statements from provincial government departments, utility companies or other agencies to whom the application was referred; technical reports prepared by or for the applicant, including groundwater evaluation, soil suitability for private sewage disposal; specialty engineering or design reports and property appraisal reports if required in determining cash in place of reserves.
- These records may be released in accordance with any policies of the municipality.

**Minutes/Records of Proceedings:**

- Under section 197(2.1) of the MGA, these bodies may deliberate and make decisions in meetings closed to the public.
- If hearings of the above bodies are held in camera, and if any notes of the proceedings are kept, they would not be routinely released. If a municipality received a FOIP request for access to the records of such meetings (if there were any), the head of a municipality might refuse to disclose information which could reveal the substance of deliberations at the in camera meetings (**section 23(1)(b)** of the FOIP Act) unless the subject matter of the deliberations were considered in a public meeting.
- If hearings of the above bodies are open to the public, records of the meetings or hearings could be released in accordance with any policies of the municipality.

**Decisions:**

- Under section 640 of the MGA, a land use bylaw establishes a method for development authorities (including municipal planning commissions) to make

decisions on applications for development permits. Pursuant to section 653, subdivision approvals are made by subdivision authorities (including municipal planning commissions) in accordance with the MGA.

- Section 656 of the MGA requires decisions of a subdivision authority to be given to an applicant, to government departments and to other persons and local authorities as required by subdivision and development regulations. Once a subdivision plan has been registered at a Land Titles Office, individuals can obtain a copy of the registered plan from that registry.
- See [question 57](#) for the release of information regarding development permits.

**56. Can the records related to appeals dealt with by subdivision and development appeal boards or appeals to the Municipal Government Board be released to anybody upon request?**

**Submissions:**

- Section 686(4) of the MGA requires a Subdivision and Development Appeal Board to make available for public inspection before a hearing all relevant documents and materials related to an appeal, including the application for a development permit, the decision and notice of appeal.
- Under section 686(3) of the MGA, notice of the appeal hearing must be given to the appellant, the development authority who issued the order, decision or permit and to owners required to be notified under the land use bylaw and any other affected person.
- As a matter of practice, the records related to an appeal to the Municipal Government Board regarding subdivision approval could be released by the Municipal Government Board to anyone upon request.

**Minutes/Records of Proceedings:**

- a) Under section 197(2.1) of the MGA, subdivision and development appeal boards may deliberate and make decisions in meetings closed to the public.
  - If hearings of the subdivision and development appeal boards are held in camera, and if any notes of the proceedings are kept, they would not be routinely released, except for records related to a development appeal, as indicated below. If a municipality received a FOIP request for access to the records of such meetings (if there were any), the head of a municipality might refuse to disclose information which could reveal the substance of deliberations at the in camera meetings (**section 23(1)(b)** of the FOIP Act) unless the subject-matter of the deliberations were considered in a public meeting.
  - If hearings of the above bodies are open to the public, records of the meetings or hearings could be released in accordance with any policies of the municipality.
- b) Hearings of the Municipal Government Board are held in public. No formal minutes are kept unless one or more parties request that minutes be taken. The requesting party is responsible for recording the minutes and providing the Board and the other party(ies) with a copy of the minutes. Any notes of the proceedings taken and kept by Board members would have to be released, subject to any applicable exceptions, if there was a FOIP request for access to those notes.

**Decisions:**

- Section 686(4) of the MGA requires a Subdivision and Development Appeal Board to make available for public inspection before a hearing all relevant documents and materials related to an appeal, including the application for a development permit, the decision and notice of appeal. The decision of the Board would also be available upon request because of the public nature of the process. Once a development permit was issued, it would be treated in the manner referred to in [question 57](#) below.
- Decisions of the Municipal Government Board are made in camera. If notes of this part of the proceedings were kept, they would not be routinely released.
- Section 505 of the MGA requires that a decision of the Municipal Government Board and the reasons for a decision, if requested, must be sent to all persons notified of the hearing. If the decision contained personal or business information, then **sections 16** and **17** of the FOIP Act would have to be applied to determine what information could be released.
- Decisions of the Municipal Government Board regarding annexation appeals must be approved by Cabinet. If there was a FOIP request for a decision regarding an annexation appeal, **section 22** of the FOIP Act (Cabinet confidences) would have to be applied to those records.

**57. Can a municipality disclose a copy of a development permit or a list of development permits issued?**

- The records requested should be reviewed to determine whether any of the exceptions to disclosure in the FOIP Act would apply and then all or part of the records would be released based upon the application of the Act.
- Municipalities can follow their regular practice concerning this information, as set out in their land use bylaw and policies.
- If the permit has been issued to an individual, the municipality may release the name of the permit holder and the "nature of the permit". This would likely include all the information related to what the permit allows the permit holder to do (e.g. location of work site, the kind of use, value of the project, etc.). It may not include other personal information of the permit holder, such as their home phone number, or home address if different than the location of the work site.
- If the permit has been issued to a business or company, it is unlikely that it would contain personal information or commercial or technical information under **section 16** of the Act and so the permit could be disclosed in accordance with the municipality's practice concerning the release of this information.

**58. Can a municipality disclose a copy of a building permit or a list of building permits issued?**

- In December, 1999, section 63(1) of the *Safety Codes Act* was amended. As a result, municipalities no longer need an owner's consent or a FOIP request to release building permit information.
- The records requested should be reviewed to determine whether any of the exceptions to disclosure in the FOIP Act apply and then all or part of the records would be released on the basis of this review.
- If the permit has been issued to an individual, a municipality may release the name of the permit holder and the "nature of the permit". This would likely

include all the information related to what the permit allows the permit holder to do (e.g. location of work site, the kind of structure, its size, value of the project, etc.). It may not include other personal information of the permit holder, such as their home phone number, or home address if different than the location of the work site. In the *Investigation Report F2002-IR-006* involving the City of Calgary and the sale of building permit information, the Investigator found that the FOIP Act allows for the disclosure of personal information on building permits if the release is limited to the name of the applicant and the nature of the permit. The nature of the permit includes the construction site address.

- If the permit has been issued to a business or company, it is unlikely that the permit would contain commercial or technical information (**section 16** of the FOIP Act) or personal information (**section 17** of the FOIP Act). In that case, the permit could be disclosed in accordance with the municipality's practice concerning the release of this information.

## OTHER QUESTIONS

**59. If a municipality receives a FOIP request for records about a complaint made about an individual, for example, a complaint made under a noise bylaw, does the municipality have to release the name of the complainant?**

- Not necessarily. The municipality would need to weigh several factors, including whether the name of the complainant would harm a law enforcement matter (**section 20(1)(d)** of the FOIP Act ) or would be an unreasonable invasion of the privacy of the complainant (**section 17(1)** of the FOIP Act).
- The Information and Privacy Commissioner, in *Order 96-010*, upheld Alberta Municipal Affairs' decision not to disclose the name of a person who expressed a concern about another individual's ability to drive. In this case, the confidentiality of the informant prevailed over the right of the individual's right to know the informant's identity.

**60. Can a municipality disclose to a land owner information regarding whether his/her neighbour received a weed clean-up notice?**

- The municipality can't disclose that information, but can confirm that, if there was a violation, the bylaw would be enforced.

**61. Can a municipality disclose to a land owner who has received a weed clean-up notice the name of the complainant and whether the complainant has also received a weed clean-up notice?**

- The municipality would need to weigh several factors, including whether the name of the complainant would harm a law enforcement matter, (**section 20(1)(d)** of the FOIP Act) or would be an unreasonable invasion of the privacy of the complainant (**section 17(1)** of the FOIP Act).
- The Information and Privacy Commissioner, in *Order 96-010*, upheld Alberta Municipal Affairs' decision not to disclose the name of a person who expressed a concern about another individual's ability to drive. In this case, the confidentiality of the informant prevailed over the right of the individual's right to know the informant's identity.
- The municipality could indicate that normal practice would be to issue a notice if a land owner was in violation of a weed control bylaw.

**62. If a municipality receives a complaint about an individual, for example, a census taker or bylaw enforcement officer, would the municipality release the name of the complainant to the individual?**

- In these situations, it may be necessary to disclose the name of a complainant so that the matter can be resolved. For example, a supervisor cannot investigate a complaint against an employee without describing the complaint to the employee. Even if the name of the complainant is not released, the circumstances identify the complainant.
- In such situations, the complainant should be advised that, in order to resolve the situation, it may be necessary to disclose their name or other identifying information.

**63. Can a municipality disclose bidders lists/lists of plan holders for municipal projects to contractors, construction companies, agencies or other persons on request?**

- Yes. A list of bidders for a municipal project should be routinely available on request as part of an open tendering process. A FOIP request for this information is not required.

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

- Not entirely. Copies of contracts can be disclosed after they have been awarded, on the premise that the public has the right to know who has been engaged to do work for the municipality and how much is being paid for the work.
- However, some information in the contract, or in supplementary documentation, must be withheld if it meets the three-part test in **section 16** of the FOIP Act for harm to business interests of the contractor.
- Information may also be withheld if the local government body can show that its disclosure could reasonably harm its economic interests, result in financial loss or interfere with negotiations (**section 25** of the FOIP Act).
- Examples of information that might be withheld include unit pricing, actual wages paid to employees of the contractor or proprietary information (e.g. trade secrets).

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

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

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

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

- Refer to the publication entitled *Guide to Identifying Personal Information Banks* for more information.

**For more information contact:**

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- *FOIP Act and Regulation*  
- *FOIP Guidelines and Practices*  
- *Annotated FOIP Act*