

2017

CHAPTER 12

An Act to amend *The Freedom of Information and Protection of Privacy Act*

(Assented to May 17, 2017)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Freedom of Information and Protection of Privacy Amendment Act, 2017*.

S.S. 1990-91, c.F-22.01 amended

2 *The Freedom of Information and Protection of Privacy Act* is amended in the manner set forth in this Act.

Section 2 amended

3(1) Subsection 2(1) is amended:

(a) **by adding the following clause after clause (b):**

“(b.1) ‘**employee of a government institution**’ means an individual employed by a government institution and includes an individual retained under a contract to perform services for the government institution”; **and**

(b) **by adding the following clause after clause (e):**

“(e.1) ‘**information management service provider**’ means a person who or body that:

(i) processes, stores, archives or destroys records of a government institution containing personal information; or

(ii) provides information management or information technology services to a government institution with respect to records of the government institution containing personal information”.

(2) **Clause 2(2)(b) is repealed and the following substituted:**

“(b) the Legislative Assembly Service or, subject to subsections 3(3) and (4), offices of members of the Assembly or members of the Executive Council”.

Section 3 amended

4 The following subsections are added after subsection 3(2):

“(3) Subject to the regulations, the following sections apply, with any necessary modification, to offices of members of the Assembly and their employees as if the members and their offices were government institutions:

(a) sections 24 to 30;

(b) section 33.

“(4) Subject to the regulations, the following sections apply, with any necessary modification, to offices of members of the Executive Council and their employees as if the members and their offices were part of the government institution for which the member of the Executive Council serves as the head:

- (a) sections 24 and 24.1;
- (b) sections 25 to 30;
- (c) section 33”.

New section 5.1

5 The following section is added after section 5:

“Duty of government institution to assist

5.1(1) Subject to this Act and the regulations, a government institution shall respond to a written request for access openly, accurately and completely.

- (2) On the request of an applicant, the government institution shall:
 - (a) provide an explanation of any term, code or abbreviation used in the information; or
 - (b) if the government institution is unable to provide an explanation in accordance with clause (a), endeavour to refer the applicant to a government institution that is able to provide an explanation”.

Section 7 amended

6(1) Subsection 7(2) is amended:

- (a) by striking out “or” after clause (e);
- (b) by adding “or” after clause (f); and
- (c) by adding the following clause after clause (f):

“(g) stating that the request has been disregarded pursuant to section 45.1, and setting out the reason for which the request was disregarded”.

(2) Subsection 7(4) is repealed and the following substituted:

“(4) If an application is made with respect to a record that is exempt from access pursuant to section 15, 16, 21 or 22 or subsection 29(1), the head may refuse to confirm or deny that the record exists or ever did exist”.

New section 7.1

7 The following section is added after section 7:

“Applications deemed abandoned

7.1(1) If the head has invited the applicant to supply additional details pursuant to subsection 6(3) or has given the applicant notice pursuant to clause 7(2)(a) and the applicant does not respond within 30 days after receiving the invitation or notice, the application is deemed to be abandoned.

- (2) The head shall provide the applicant with a notice advising that the application is deemed to be abandoned.

(3) A notice provided pursuant to subsection (2) is to state that the applicant may request a review by the commissioner within one year after the notice is given”.

New section 10

8 Section 10 is repealed and the following substituted:

“Manner of access

10(1) If an applicant is entitled to access pursuant to subsection 9(1), a head shall provide the applicant with access to the record in accordance with this section.

(2) Subject to subsection (3), if a record is in electronic form, a head shall give access to the record in electronic form if:

- (a) it can be produced using the normal computer hardware and software and technical expertise of the government institution;
- (b) producing it would not interfere unreasonably with the operations of the government institution; and
- (c) it is reasonably practicable to do so.

(3) If a record is a microfilm, film, sound or video recording or machine-readable record, a head may give access to the record:

- (a) by permitting the applicant to examine a transcript of the record;
- (b) by providing the applicant with a copy of the transcript of the record; or
- (c) in the case of a record produced for visual or aural reception, by permitting the applicant to view or hear the record or by providing the applicant with a copy of it.

(4) A head may give access to a record:

- (a) by providing the applicant with a copy of the record; or
- (b) if it is not reasonable to reproduce the record, by giving the applicant an opportunity to examine the record”.

Section 15 amended

9 The following clauses are added after clause 15(1)(k):

“(k.1) endanger the life or physical safety of a law enforcement officer or any other person;

“(k.2) reveal any information relating to or used in the exercise of prosecutorial discretion;

“(k.3) reveal a record that has been seized by a law enforcement officer in accordance with an Act or Act of Parliament”.

Section 22 amended

10 Clause 22(a) is repealed and the following substituted:

“(a) contains any information that is subject to any privilege that is available at law, including solicitor-client privilege”.

Section 23 amended

11 Subsection 23(3) is repealed and the following substituted:

“(3) Subsection (1) does not apply to the following provisions, and those provisions prevail:

- (a) *The Adoption Act, 1998*;
- (b) section 31 of *The Archives and Public Records Management Act*;
- (c) section 74 of *The Child and Family Services Act*;
- (d) section 14 of *The Enforcement of Maintenance Orders Act, 1997*;
- (e) *The Health Information Protection Act*;
- (f) section 91.1 of *The Police Act, 1990*;
- (g) section 13 of *The Proceedings against the Crown Act*;
- (h) section 15 of *The Securities Act, 1988*;
- (i) sections 40.1, 97 and 283 of *The Traffic Safety Act*;
- (j) section 61 of *The Trust and Loan Corporations Act, 1997*;
- (k) Part VIII of *The Vital Statistics Act, 2009*;
- (l) sections 172 to 174 of *The Workers’ Compensation Act, 2013*;
- (m) any prescribed Act or prescribed provisions of an Act; or
- (n) any prescribed regulation or prescribed provisions of a regulation”.

New sections 24.1 and 24.2

12 The following sections are added after section 24:**“Duty of government institution to protect**

24.1 Subject to the regulations, a government institution shall establish policies and procedures to maintain administrative, technical and physical safeguards that:

- (a) protect the integrity, accuracy and confidentiality of the personal information in its possession or under its control;
- (b) protect against any reasonably anticipated:
 - (i) threat or hazard to the security or integrity of the personal information in its possession or under its control;
 - (ii) loss of the personal information in its possession or under its control; or
 - (iii) unauthorized access to or use, disclosure or modification of the personal information in its possession or under its control; and
- (c) otherwise ensure compliance with this Act by its employees.

“Information management service provider

24.2(1) A government institution may provide personal information to an information management service provider for the purposes of:

- (a) having the information management service provider process, store, archive or destroy the personal information for the government institution;
- (b) enabling the information management service provider to provide the government institution with information management or information technology services;
- (c) having the information management service provider take possession or control of the personal information;
- (d) combining records containing personal information; or
- (e) providing consulting services.

(2) Before disclosing personal information to an information management service provider, a government institution shall enter into a written agreement with the information management service provider that:

- (a) governs the access to and use, disclosure, storage, archiving, modification and destruction of the personal information;
- (b) provides for the protection of the personal information; and
- (c) meets the requirements of this Act and the regulations.

(3) An information management service provider shall not obtain access to, use, disclose, process, store, archive, modify or destroy personal information received from a government institution except for the purposes set out in subsection (1).

(4) An information management service provider shall comply with the terms and conditions of the agreement entered into pursuant to subsection (2).”

Section 29 amended**13 Clause 29(2)(p) is repealed and the following substituted:**

“(p) if the information is publicly available, including information that is prescribed as publicly available”.

New section 29.1**14 The following section is added after section 29:****“Notification**

29.1 A government institution shall take all reasonable steps to notify an individual of an unauthorized use or disclosure of that individual’s personal information by the government institution if it is reasonable in the circumstances to believe that the incident creates a real risk of significant harm to the individual”.

Section 32 amended

15(1) Subsection 32(1) is amended:

- (a) by striking out “or” after clause (a);
- (b) by adding “or” after clause (b); and
- (c) by adding the following clause after clause (b):
 - “(c) if the request has been disregarded, to be advised of the reason for which it has been disregarded”.

(2) Subsection 32(2) is amended:

- (a) by striking out “or” after clause (a);
- (b) by adding “or” after clause (b); and
- (c) by adding the following clause after clause (b):
 - “(c) the request has been disregarded, setting out the reason for which the request was disregarded pursuant to section 45.1”.

New sections 45 and 45.1

16 Section 45 is repealed and the following substituted:**“General powers of commissioner**

45(1) In this section, ‘**extraprovincial, territorial or federal commissioner**’ means a person who, with respect to Canada or with respect to another province or territory of Canada, has duties, powers and functions similar to those of the commissioner.

- (2) The commissioner may:
 - (a) engage in or commission research into matters affecting the carrying out of the purposes of this Act;
 - (b) conduct public education programs and provide information concerning this Act and the commissioner’s role and activities;
 - (c) receive representations concerning the operation of this Act;
 - (d) determine the procedure to be followed in the exercise of the powers or performance of any duties of the commissioner pursuant to this Act; and
 - (e) exchange personal information with an extraprovincial, territorial or federal commissioner for the purpose of carrying out investigations with respect to personal information in the possession or under the control of government institutions or to conduct a review involving a government institution and at least one other jurisdiction.

“Power to authorize a government institution to disregard applications or requests

45.1(1) The head may apply to the commissioner to disregard one or more applications pursuant to section 6 or requests pursuant to section 32.

(2) In determining whether to grant an application or request mentioned in subsection (1), the commissioner shall consider whether the application or request:

(a) would unreasonably interfere with the operations of the government institution because of the repetitious or systematic nature of the application or request;

(b) would amount to an abuse of the right of access or right of correction because of the repetitious or systematic nature of the application or request; or

(c) is frivolous or vexatious, not in good faith or concerns a trivial matter.

(3) The application pursuant to subsection 6(1) or the request pursuant to clause 32(1)(a) is suspended until the commissioner notifies the head of the commissioner's decision with respect to an application or request mentioned in subsection (1).

(4) If the commissioner grants an application or request mentioned in subsection (1), the application pursuant to subsection 6(1) or the request pursuant to clause 32(1)(a) is deemed to not have been made.

(5) If the commissioner refuses an application or request mentioned in subsection (1), the 30-day period mentioned in subsection 7(2) or subsection 32(2) resumes".

Section 46 amended

17(1) Subsection 46(1) is repealed and the following substituted:

"(1) Subject to clause 45(2)(e), the commissioner shall not disclose any information that comes to the knowledge of the commissioner in the exercise of the powers, performance of the duties or carrying out of the functions of the commissioner pursuant to this Act".

(2) Subsection 46(2) is repealed and the following substituted:

"(2) Subsection (1) applies, with any necessary modification, to the staff of the commissioner and any contractors employed by the commissioner".

Section 47 amended

18 Subsection 47(2) is repealed and the following substituted:

"(2) Subsection (1) applies, with any necessary modification, to the staff of the commissioner and any contractors employed by the commissioner.

"(3) The commissioner, staff of the commissioner or any contractors employed by the commissioner may be a witness in or produce any documents relevant to the prosecution of an offence against this Act".

Section 49 amended

19(1) Subsection 49(1) is amended:

(a) by adding the following clauses after clause (a):

"(a.1) an applicant is not satisfied that a reasonable fee was estimated pursuant to subsection 9(2);

“(a.2) an applicant believes that all or part of the fee estimated should be waived pursuant to subsection 9(5);

“(a.3) an applicant believes that an application was transferred to another government institution pursuant to subsection 11(1) and that government institution did not have a greater interest;

“(a.4) an individual believes that his or her personal information has not been collected, used or disclosed in accordance with this Act or the regulations”; **and**

(b) in the portion following clause (c) by adding “or individual” after “applicant”.

(2) Subsection 49(2) is amended by adding “or individual” after “applicant”.

Section 50 amended

20 The following clauses are added after clause 50(2)(a):

“(a.1) does not affect the applicant or individual personally;

“(a.2) has not moved forward as the applicant or individual has failed to respond to the requests of the commissioner;

“(a.3) concerns a government institution that has an internal review process that has not been used;

“(a.4) concerns a professional who is governed by a professional body that regulates its members pursuant to an Act, and a complaints procedure available through the professional body has not been used;

“(a.5) may be considered pursuant to another Act that provides a review or other mechanism to challenge a government institution’s decision with respect to the collection, amendment, use or disclosure of personal information and that review or mechanism has not been used;

“(a.6) does not contain sufficient evidence;

“(a.7) has already been the subject of a report pursuant to section 55 by the commissioner”.

New section 51

21 Section 51 is repealed and the following substituted:

“Notice of intention to investigate or review

51 The commissioner shall, immediately on commencing an investigation or review, inform the head of:

(a) the commissioner’s intention to conduct an investigation or review; and

(b) the substance of the investigation or application for review”.

Section 52 amended

22 Subsection 52(1) is amended in the portion preceding clause (a) by striking out “by an applicant” after “section 49”.

New section 55**23 Section 55 is repealed and the following substituted:****“Report of commissioner**

55(1) On completing a review or investigation, the commissioner may prepare a written report setting out the commissioner’s recommendations with respect to the matter and the reasons for those recommendations.

(2) If a report is prepared pursuant to subsection (1), the commissioner shall forward a copy of the report to the head and, if the matter was referred to the commissioner by:

(a) an applicant or individual, to the applicant or individual and to any third party notified by the head pursuant to section 52; and

(b) a third party, to the third party and to the applicant.

(3) In the report mentioned in subsection (1), the commissioner may make any recommendations with respect to the matter under review or investigation that the commissioner considers appropriate”.

Section 56 amended**24 Clause 56(b) is amended by striking out “clause 55(1)(b)” and substituting “subsection 55(2)”.****Section 57 amended****25(1) Subsection 57(1) is repealed and the following substituted:**

“(1) Within 30 days after receiving a decision of the head pursuant to section 56, an applicant or individual or a third party may appeal that decision to the court”.

(2) Subsection 57(4) is amended by adding “or individual” after “an applicant”.**Section 58 amended****26 The following subsections are added after subsection 58(6):**

“(7) If, with respect to an appeal of a decision of the head regarding the matters mentioned in clauses 49(1)(a.1) to (a.4), the court determines that the decision of the head was not authorized pursuant to this Act, the court may:

(a) order the head to reconsider the decision and proceed in accordance with this Act, subject to any conditions that the court considers appropriate; or

(b) make any other order that the court considers appropriate.

“(8) If, with respect to an appeal mentioned in subsection (7), the court finds that the head had authority pursuant to this Act to make the decision that is the subject of the appeal, the court shall not order the head to reconsider the decision”.

Section 60 amended**27 Subsection 60(1) is amended by adding “or employees” after “officers”.**

Section 64 repealed**28 Section 64 is repealed.****New sections 65 and 65.1****29 Section 65 is repealed and the following substituted:****“Access to manuals****65(1)** Every government institution shall take reasonable steps to:

- (a) make available on its website all manuals, policies, guidelines or procedures that are used in decision-making processes that affect the public by employees of the government institution in administering or carrying out programs or activities of the government institution; or
- (b) provide those documents when requested in electronic or paper form.

(2) Any information in a record that a head would be authorized to refuse to give access to pursuant to this Act or the regulations may be excluded from manuals, policies, guidelines or procedures that are made available or provided pursuant to subsection (1).

“Records available without an application

65.1(1) Subject to subsection (2), the head may establish categories of records that are in the possession or under the control of the government institution and that are available to the public within a reasonable time without an application for access pursuant to this Act.

(2) The head shall not establish a category of records that contain personal information or third party information unless that information may be disclosed pursuant to this Act or the regulations”.

Section 68 amended

30(1) **Subsection 68(1) is amended by striking out “\$1,000, to imprisonment for not more than three months or to both fine and imprisonment” and substituting “\$50,000, to imprisonment for not more than one year or to both”.**

(2) **Subsection 68(2) is amended by striking out “subsection (1)” and substituting “this section”.**

(3) **Subsection 68(3) is amended:**

- (a)** **by striking out “or” after clause (b);**
- (b)** **by adding “or” after clause (c);**
- (c)** **by adding the following clause after clause (c):**

“(d) wilfully destroys any record that is governed by this Act with the intent to evade a request for access to the record”; **and**

(d) **in the portion following clause (d) by striking out “\$1,000, to imprisonment for not more than three months or to both fine and imprisonment” and substituting “\$50,000, to imprisonment for not more than one year or to both”.**

(4) The following subsections are added after subsection 68(3):

“(4) No employee of a government institution or of an information management service provider shall knowingly disclose or direct another person to disclose personal information in circumstances that would constitute an offence by the government institution or an information management service provider pursuant to this Act.

“(5) Every employee of a government institution or of an information management service provider who contravenes subsection (4) is guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000, to imprisonment for not more than one year or to both, whether or not the government institution or information management service provider has been prosecuted or convicted.

“(6) No employee of a government institution shall wilfully access or use or direct another person to access or use personal information that is not reasonably required by that individual to carry out a purpose authorized pursuant to this Act.

“(7) Every employee of a government institution who contravenes subsection (6) is guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000, to imprisonment for not more than one year or to both, whether or not the government institution has been prosecuted or convicted.

“(8) No employee of an information management service provider shall wilfully access or use or direct another person to access or use personal information for a purpose that is not authorized by subsection 24.2(1).

“(9) Every employee of an information management service provider who contravenes subsection (8) is guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000, to imprisonment for not more than one year or to both, whether or not the information management service provider has been prosecuted or convicted.

“(10) No prosecution shall be commenced pursuant to this section after the expiration of two years from the date of the discovery of the alleged offence”.

Section 69 amended

31 The following clause is added after clause 69(d):

“(d.1) for the purposes of subsections 3(3) and (4), respecting the application of this Act and the regulations, including:

(i) prescribing procedures relating to members of the Assembly and their employees and to members of the Executive Council and their employees;

(ii) prescribing all or part of any provision of this Act or the regulations that is to apply to members of the Assembly and their employees and to members of the Executive Council and their employees;

(iii) exempting all or part of any provision of this Act or the regulations from applying to members of the Assembly and their employees and to members of the Executive Council and their employees; and

(iv) prescribing any other matter or thing that the Lieutenant Governor in Council considers necessary respecting members of the Assembly and their employees and members of the Executive Council and their employees”.

Coming into force

32 This Act comes into force on proclamation.