
TORONTO LICENSING TRIBUNAL

BUSINESS MEETING 16

Date of Meeting: Friday, June 7, 2013

Time: 9:30 a.m.

Location: Council Chamber
2nd Floor, East York Civic Centre
850 Coxwell Avenue

Enquiry: Andrea Sloan

Supervisor

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If the Tribunal wishes to meet in closed session (privately) during its Business Meeting, a Member must make a motion to do so and the reason given (in accordance with the *City of Toronto Act, 2006*).

Declarations of Interest under the *Municipal Conflict of Interest Act*

Communications/Reports:

Item to be discussed:

Disclosure of information, including release of audio recordings of Tribunal hearings to members of the public.

Attachments: (1) Municipal Freedom of Information and Protection of Privacy Act

(2) Regulation 823

Municipal Freedom of Information and Protection of Privacy Act

R.S.O. 1990, CHAPTER M.56

Consolidation Period: From June 4, 2007 to the [e-Laws currency date](#).

Last amendment: 2007, c. 13, s. 45.

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Purposes

- 1.** The purposes of this Act are,
 - (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,
 - (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
 - (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information. R.S.O. 1990, c. M.56, s. 1.

Interpretation

- 2. (1)** In this Act,

“close relative” means a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood or adoption; (“proche parent”)

“head”, in respect of an institution, means the individual or body determined to be head under section 3; (“personne responsable”)

“Information and Privacy Commissioner” and “Commissioner” mean the Commissioner appointed under subsection 4 (1) of the *Freedom of Information and Protection of Privacy Act*; (“commissaire à l’information et à la protection de la vie privée”, “commissaire”)

“institution” means,

- (a) a municipality,
- (b) a school board, municipal service board, city board, transit commission, public library board, board of health, police services board, conservation authority, district social services administration board, local services board, planning board, local roads board, police village or joint committee of management or joint board of management established under the *Municipal Act, 2001* or the *City of Toronto Act, 2006* or a predecessor of those Acts,
- (c) any agency, board, commission, corporation or other body designated as an institution in the regulations; (“institution”)

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
- (c) the conduct of proceedings referred to in clause (b); (“exécution de la loi”)

“Minister” means the minister designated under section 3 of the *Freedom of Information and Protection of Privacy Act* as the responsible minister for the purposes of that Act; (“ministre”)

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,

- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; (“renseignements personnels”)

“personal information bank” means a collection of personal information that is organized and capable of being retrieved using an individual's name or an identifying number or particular assigned to the individual; (“banque de renseignements personnels”)

“record” means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
- (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; (“document”)

“regulations” means the regulations made under this Act; (“règlements”)

“spouse” means,

- (a) a spouse as defined in section 1 of the *Family Law Act*, or
- (b) either of two persons who live together in a conjugal relationship outside marriage. (“conjoint”) R.S.O. 1990, c. M.56, s. 2 (1); 1997, c. 25, Sched. E, s. 8; 2000, c. 26, Sched. J, s. 2; 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. N, s. 3 (1); 2006, c. 32, Sched. C, s. 35; 2006, c. 34, Sched. C, s. 13 (1, 2).

Personal information

(2) Personal information does not include information about an individual who has been dead for more than thirty years. R.S.O. 1990, c. M.56, s. 2 (2).

Business identity information, etc.

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity. 2006, c. 34, Sched. C, s. 13 (3).

Same

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling. 2006, c. 34, Sched. C, s. 13 (3).

Bodies considered part of municipality

(3) Every agency, board, commission, corporation or other body not mentioned in clause (b) of the definition of “institution” in subsection (1) or designated under clause (c) of the definition of “institution” in subsection (1) is deemed to be a part of the municipality for the purposes of this Act if all of its members or officers are appointed or chosen by or under the authority of the council of the municipality. R.S.O. 1990, c. M.56, s. 2 (3); 2002, c. 17, Sched. F, Table.

Designation of head

3. (1) The members of the council of a municipality may by by-law designate from among themselves an individual or a committee of the council to act as head of the municipality for the purposes of this Act. R.S.O. 1990, c. M.56, s. 3 (1); 2002, c. 17, Sched. F, Table.

Idem

(2) The members elected or appointed to the board, commission or other body that is an institution other than a municipality may designate in writing from among themselves an individual or a committee of the body to act as head of the institution for the purposes of this Act. R.S.O. 1990, c. M.56, s. 3 (2); 2002, c. 17, Sched. F, Table.

If no designation

(3) If no person is designated as head under this section, the head shall be,

- (a) the council, in the case of a municipality; and
- (b) the members elected or appointed to the board, commission or other body in the case of an institution other than a municipality. R.S.O. 1990, c. M.56, s. 3 (3); 2002, c. 17, Sched. F, Table.

**PART I
FREEDOM OF INFORMATION**

ACCESS TO RECORDS

Right of access

4. (1) Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

- (a) the record or the part of the record falls within one of the exemptions under sections 6 to 15; or
- (b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

Severability of record

(2) If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 6 to 15 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions. 1996, c. 1, Sched. K, s. 13.

Obligation to disclose

5. (1) Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

Notice

(2) Before disclosing a record under subsection (1), the head shall cause notice to be given to any person to whom the information in the record relates, if it is practicable to do so.

Contents of notice

- (3) The notice shall contain,
- (a) a statement that the head intends to release a record or a part of a record that may affect the interests of the person;
 - (b) a description of the contents of the record or part that relate to the person; and
 - (c) a statement that if the person makes representations forthwith to the head as to why the record or part should not be disclosed, those representations will be considered by the head.

Representations

(4) A person who is given notice under subsection (2) may make representations forthwith to the head concerning why the record or part should not be disclosed. R.S.O. 1990, c. M.56, s. 5.

EXEMPTIONS

Draft by-laws, etc.

6. (1) A head may refuse to disclose a record,
- (a) that contains a draft of a by-law or a draft of a private bill; or

- (b) that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,

- (a) in the case of a record under clause (1) (a), the draft has been considered in a meeting open to the public;
- (b) in the case of a record under clause (1) (b), the subject-matter of the deliberations has been considered in a meeting open to the public; or
- (c) the record is more than twenty years old. R.S.O. 1990, c. M.56, s. 6.

Advice or recommendations

7. (1) A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

Exceptions

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

- (a) factual material;
- (b) a statistical survey;
- (c) a report by a valuator;
- (d) an environmental impact statement or similar record;
- (e) a report or study on the performance or efficiency of an institution;
- (f) a feasibility study or other technical study, including a cost estimate, relating to a policy or project of an institution;
- (g) a report containing the results of field research undertaken before the formulation of a policy proposal;
- (h) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program;
- (i) a report of a committee or similar body within an institution, which has been established for the purpose of preparing a report on a particular topic;
- (j) a report of a body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;

- (k) the reasons for a final decision, order or ruling of an officer or an employee of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution.

Idem

(3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if the record is more than twenty years old. R.S.O. 1990, c. M.56, s. 7.

Law enforcement

8. (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (f) deprive a person of the right to a fair trial or impartial adjudication;
- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
- (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
- (j) facilitate the escape from custody of a person who is under lawful detention;
- (k) jeopardize the security of a centre for lawful detention; or
- (l) facilitate the commission of an unlawful act or hamper the control of crime.
R.S.O. 1990, c. M.56, s. 8 (1); 2002, c. 18, Sched. K, s. 14 (1).

Idem

(2) A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
- (b) that is a law enforcement record if the disclosure would constitute an offence under an Act of Parliament;
- (c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
- (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority. R.S.O. 1990, c. M.56, s. 8 (2); 2002, c. 18, Sched. K, s. 14 (2).

Refusal to confirm or deny existence of record

(3) A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) applies. R.S.O. 1990, c. M.56, s. 8 (3).

Exception

(4) Despite clause (2) (a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency that is authorized to enforce and regulate compliance with a particular statute of Ontario. R.S.O. 1990, c. M.56, s. 8 (4).

Idem

(5) Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections. R.S.O. 1990, c. M.56, s. 8 (5).

Civil Remedies Act, 2001

8.1 A head may refuse to disclose a record and may refuse to confirm or deny the existence of a record if disclosure of the record could reasonably be expected to interfere with the ability of the Attorney General to determine whether a proceeding should be commenced under the *Civil Remedies Act, 2001*, conduct a proceeding under that Act or enforce an order made under that Act. 2001, c. 28, s. 23 (1); 2002, c. 18, Sched. K, s. 15; 2007, c. 13, s. 45 (1).

Prohibiting Profiting from Recounting Crimes Act, 2002

8.2 A head may refuse to disclose a record and may refuse to confirm or deny the existence of a record if disclosure of the record could reasonably be expected to interfere with the ability of the Attorney General to determine whether a proceeding should be commenced under the *Prohibiting Profiting from Recounting Crimes Act, 2002*, conduct a proceeding under that Act or enforce an order made under that Act. 2002, c. 2, ss. 16 (1), 19 (8); 2002, c. 18, Sched. K, s. 16.

Relations with governments

9. (1) A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

- (a) the Government of Canada;
- (b) the Government of Ontario or the government of a province or territory in Canada;
- (c) the government of a foreign country or state;
- (d) an agency of a government referred to in clause (a), (b) or (c); or
- (e) an international organization of states or a body of such an organization. R.S.O. 1990, c. M.56, s. 9 (1); 2002, c. 18, Sched. K, s. 17.

Idem

(2) A head shall disclose a record to which subsection (1) applies if the government, agency or organization from which the information was received consents to the disclosure. R.S.O. 1990, c. M.56, s. 9 (2).

Third party information

10. (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute. R.S.O. 1990, c. M.56, s. 10 (1); 2002, c. 18, Sched. K, s. 18.

Consent to disclosure

(2) A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure. R.S.O. 1990, c. M.56, s. 10 (2).

Economic and other interests

11. A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;

- (b) information obtained through research by an employee of an institution if the disclosure could reasonably be expected to deprive the employee of priority of publication;
- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of an institution if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;
- (h) questions that are to be used in an examination or test for an educational purpose;
- (i) submissions in respect of a matter under the *Municipal Boundary Negotiations Act* commenced before its repeal by the *Municipal Act, 2001*, by a party municipality or other body before the matter is resolved. R.S.O. 1990, c. M.56, s. 11; 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. K, s. 19.

Solicitor-client privilege

12. A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation. R.S.O. 1990, c. M.56, s. 12.

Danger to safety or health

13. A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual. R.S.O. 1990, c. M.56, s. 13; 2002, c. 18, Sched. K, s. 20.

Personal privacy

14. (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (e) for a research purpose if,
 - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy. R.S.O. 1990, c. M.56, s. 14 (1).

Criteria re invasion of privacy

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and

- (i) the disclosure may unfairly damage the reputation of any person referred to in the record. R.S.O. 1990, c. M.56, s. 14 (2).

Presumed invasion of privacy

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (d) relates to employment or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations. R.S.O. 1990, c. M.56, s. 14 (3).

Limitation

(4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution;
- (b) discloses financial or other details of a contract for personal services between an individual and an institution; or
- (c) discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons. R.S.O. 1990, c. M.56, s. 14 (4); 2006, c. 19, Sched. N, s. 3 (2).

Refusal to confirm or deny existence of record

(5) A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy. R.S.O. 1990, c. M.56, s. 14 (5).

Information soon to be published

- 15.** A head may refuse to disclose a record if,
- (a) the record or the information contained in the record has been published or is currently available to the public; or
 - (b) the head believes on reasonable grounds that the record or the information contained in the record will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it. R.S.O. 1990, c. M.56, s. 15.

Exemptions not to apply

16. An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. R.S.O. 1990, c. M.56, s. 16.

ACCESS PROCEDURE

Request

- 17. (1)** A person seeking access to a record shall,
- (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
 - (c) at the time of making the request, pay the fee prescribed by the regulations for that purpose. 1996, c. 1, Sched. K, s. 14.

Frivolous request

(1.1) If the head of the institution is of the opinion on reasonable grounds that the request is frivolous or vexatious, subsections (2) to (5) do not apply to the request. 1996, c. 1, Sched. K, s. 14; 2006, c. 34, Sched. C, s. 14 (1).

Sufficiency of detail

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1). R.S.O. 1990, c. M.56, s. 17 (2).

Request for continuing access to record

(3) The applicant may indicate in the request that it shall, if granted, continue to have effect for a specified period of up to two years. 2006, c. 34, Sched. C, s. 14 (2).

Institution to provide schedule

(4) When a request that is to continue to have effect is granted, the institution shall provide the applicant with,

- (a) a schedule showing dates in the specified period on which the request shall be deemed to have been received again, and explaining why those dates were chosen; and
- (b) a statement that the applicant may ask the Commissioner to review the schedule. 2006, c. 34, Sched. C, s. 14 (2).

Act applies as if new requests were being made

(5) This Act applies as if a new request were being made on each of the dates shown in the schedule. 2006, c. 34, Sched. C, s. 14 (2).

Involvement of other institutions

18. (1) In this section,

“institution” includes an institution as defined in section 2 of the *Freedom of Information and Protection of Privacy Act*.

Request to be forwarded

(2) The head of an institution that receives a request for access to a record that the institution does not have in its custody or under its control shall make reasonable inquiries to determine whether another institution has custody or control of the record, and, if the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

- (a) forward the request to the other institution; and
- (b) give written notice to the person who made the request that it has been forwarded to the other institution.

Transfer of request

(3) If an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

Greater interest

(4) For the purpose of subsection (3), another institution has a greater interest in a record than the institution that receives the request for access if,

- (a) the record was originally produced in or for the other institution; or
- (b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy of it.

When transferred request deemed made

(5) Where a request is forwarded or transferred under subsection (2) or (3), the request shall be deemed to have been made to the institution to which it is forwarded or

transferred on the day the institution to which the request was originally made received it. R.S.O. 1990, c. M.56, s. 18.

Notice by head

19. Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 18, the head of the institution to which it is forwarded or transferred, shall, subject to sections 20, 21 and 45, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part of it will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part, and if necessary for the purpose cause the record to be produced. R.S.O. 1990, c. M.56, s. 19; 1996, c. 1, Sched. K, s. 15.

Extension of time

20. (1) A head may extend the time limit set out in section 19 for a period of time that is reasonable in the circumstances, if,

- (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or
- (b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

Notice of extension

(2) A head who extends the time limit under subsection (1) shall give the person who made the request written notice of the extension setting out,

- (a) the length of the extension;
- (b) the reason for the extension; and
- (c) that the person who made the request may ask the Commissioner to review the extension. R.S.O. 1990, c. M.56, s. 20.

Frivolous request

20.1 (1) A head who refuses to give access to a record or a part of a record because the head is of the opinion that the request for access is frivolous or vexatious, shall state in the notice given under section 19,

- (a) that the request is refused because the head is of the opinion that the request is frivolous or vexatious;
- (b) the reasons for which the head is of the opinion that the request is frivolous or vexatious; and

- (c) that the person who made the request may appeal to the Commissioner under subsection 39 (1) for a review of the decision.

Non-application

(2) Sections 21 and 22 do not apply to a head who gives a notice for the purpose of subsection (1). 1996, c. 1, Sched. K, s. 16.

Notice to affected person

21. (1) A head shall give written notice in accordance with subsection (2) to the person to whom the information relates before granting a request for access to a record,

- (a) that the head has reason to believe might contain information referred to in subsection 10 (1) that affects the interest of a person other than the person requesting information; or
- (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 14 (1) (f). R.S.O. 1990, c. M.56, s. 21 (1).

Contents of notice

(2) The notice shall contain,

- (a) a statement that the head intends to disclose a record or part of a record that may affect the interests of the person;
- (b) a description of the contents of the record or part that relate to the person; and
- (c) a statement that the person may, within twenty days after the notice is given, make representations to the head as to why the record or part should not be disclosed. R.S.O. 1990, c. M.56, s. 21 (2).

Description

(2.1) If the request covers more than one record, the description mentioned in clause (2) (b) may consist of a summary of the categories of the records requested if it provides sufficient detail to identify them. 1996, c. 1, Sched. K, s. 17.

Time for notice

(3) The notice referred to in subsection (1) shall be given within thirty days after the request for access is received or, if there has been an extension of a time limit under subsection 20 (1), within that extended time limit. R.S.O. 1990, c. M.56, s. 21 (3).

Notice of delay

(4) A head who gives notice to a person under subsection (1) shall also give the person who made the request written notice of delay, setting out,

- (a) that the disclosure of the record or part may affect the interests of another party;

- (b) that the other party is being given an opportunity to make representations concerning disclosure; and
- (c) that the head will within thirty days decide whether or not to disclose the record. R.S.O. 1990, c. M.56, s. 21 (4).

Representation re disclosure

(5) Where a notice is given under subsection (1), the person to whom the information relates may, within twenty days after the notice is given, make representations to the head as to why the record or part should not be disclosed. R.S.O. 1990, c. M.56, s. 21 (5).

Representation in writing

(6) Representations under subsection (5) shall be made in writing unless the head permits them to be made orally. R.S.O. 1990, c. M.56, s. 21 (6).

Decision re disclosure

(7) The head shall decide whether or not to disclose the record or part and give written notice of the decision to the person to whom the information relates and the person who made the request within thirty days after the notice under subsection (1) is given, but not before the earlier of,

- (a) the day the response to the notice from the person to whom the information relates is received; or
- (b) twenty-one days after the notice is given. R.S.O. 1990, c. M.56, s. 21 (7).

Notice of head's decision to disclose

(8) A head who decides to disclose a record or part under subsection (7) shall state in the notice that,

- (a) the person to whom the information relates may appeal the decision to the Commissioner within thirty days after the notice is given; and
- (b) the person who made the request will be given access to the record or part unless an appeal of the decision is commenced within thirty days after the notice is given. R.S.O. 1990, c. M.56, s. 21 (8).

Access to be given unless affected person appeals

(9) A head who decides under subsection (7) to disclose the record or part shall give the person who made the request access to the record or part within thirty days after notice is given under subsection (7), unless the person to whom the information relates asks the Commissioner to review the decision. R.S.O. 1990, c. M.56, s. 21 (9).

Personal information about deceased

(10) In the case of a request by the spouse or a close relative of a deceased individual for disclosure of personal information about the deceased individual, the person making the request shall give the head all information that the person has

regarding whether the deceased individual has a personal representative and how to contact the personal representative. 2006, c. 19, Sched. N, s. 3 (3).

Deemed references

(11) If, under subsection (10), the head is informed that the deceased individual has a personal representative and is given sufficient information as to how to contact the personal representative, and if the head has reason to believe that disclosure of personal information about the deceased individual might constitute an unjustified invasion of personal privacy unless, in the circumstances, the disclosure is desirable for compassionate reasons, subsections (1) to (9) apply with the following modifications:

1. The expression “the person to whom the information relates” in subsections (1), (5), (7), (8) and (9) shall be deemed to be the expression “the personal representative”.
2. The expression “the person” in clauses (2) (a) and (b) shall be deemed to be the expression “the deceased individual” and the expression “the person” in clause (2) (c) shall be deemed to be the expression “the personal representative”.
2006, c. 19, Sched. N, s. 3 (3).

Contents of notice of refusal

22. (1) Notice of refusal to give access to a record or part under section 19 shall set out,

- (a) where there is no such record,
 - (i) that there is no such record, and
 - (ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists; or
- (b) where there is such a record,
 - (i) the specific provision of this Act under which access is refused,
 - (ii) the reason the provision applies to the record,
 - (iii) the name and position of the person responsible for making the decision, and
 - (iv) that the person who made the request may appeal to the Commissioner for a review of the decision. R.S.O. 1990, c. M.56, s. 22 (1).

Same

(2) A head who refuses to confirm or deny the existence of a record as provided in subsection 8 (3) (law enforcement), section 8.1 (*Civil Remedies Act, 2001*), section 8.2 (*Prohibiting Profiting from Recounting Crimes Act, 2002*) or subsection 14 (5) (unjustified invasion of personal privacy), shall state in the notice given under section 19,

- (a) that the head refuses to confirm or deny the existence of the record;

- (b) the provision of this Act on which the refusal is based;
- (c) the name and office of the person responsible for making the decision; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision. R.S.O. 1990, c. M.56, s. 22 (2); 2001, c. 28, s. 23 (2); 2002, c. 2, ss. 16 (2), 19 (9); 2007, c. 13, s. 45 (2).

Idem

(3) A head who refuses to disclose a record or part under subsection 21 (7) shall state in the notice given under subsection 21 (7),

- (a) the specific provision of this Act under which access is refused;
- (b) the reason the provision named in clause (a) applies to the record;
- (c) the name and office of the person responsible for making the decision to refuse access; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision. R.S.O. 1990, c. M.56, s. 22 (3).

Description

(3.1) If a request for access covers more than one record, the statement in a notice under this section of a reason mentioned in subclause (1) (b) (ii) or clause (3) (b) may refer to a summary of the categories of the records requested if it provides sufficient detail to identify them. 1996, c. 1, Sched. K, s. 18.

Deemed refusal

(4) A head who fails to give the notice required under section 19 or subsection 21 (7) concerning a record shall be deemed to have given notice of refusal to give access to the record on the last day of the period during which notice should have been given. R.S.O. 1990, c. M.56, s. 22 (4).

Copy of record

23. (1) Subject to subsection (2), a person who is given access to a record or a part of a record under this Act shall be given a copy of the record or part unless it would not be reasonably practicable to reproduce it by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part.

Access to original record

(2) If a person requests the opportunity to examine a record or part and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part.

Copy of part

(3) A person who examines a record or a part and wishes to have portions of it copied shall be given a copy of those portions unless it would not be reasonably

practicable to reproduce them by reason of their length or nature. R.S.O. 1990, c. M.56, s. 23.

INFORMATION TO BE PUBLISHED OR AVAILABLE

Publication of information re institutions

24. (1) The Minister shall cause to be published a compilation listing all institutions and, in respect of each institution, setting out,

- (a) where a request for a record should be made; and
- (b) the title of the head of the institution.

Idem

(2) The Minister shall cause the compilation to be published before the 1st day of January, 1992 and at least once every three years thereafter. R.S.O. 1990, c. M.56, s. 24.

Information available for inspection

25. (1) A head shall cause to be made available for inspection and copying by the public information containing,

- (a) a description of the organization and responsibilities of the institution;
- (b) a list of the general classes or types of records in the custody or control of the institution;
- (c) the title, business telephone and business address of the head; and
- (d) the address to which a request under this Act should be made.

Idem

(2) The head shall ensure that the information made available is amended as required to ensure its accuracy. R.S.O. 1990, c. M.56, s. 25.

Annual report of head

26. (1) A head shall make an annual report, in accordance with this section, to the Commissioner. 2006, c. 19, Sched. N, s. 3 (4).

Contents of report

(2) A report made under subsection (1) shall specify,

- (a) the number of requests under this Act or the *Personal Health Information Protection Act, 2004* for access to records made to the institution or to a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* that is acting as part of the institution;
- (b) the number of refusals by the head to disclose a record under this Act, the provisions of this Act under which disclosure was refused and the number of occasions on which each provision was invoked;

- (c) the number of refusals under the *Personal Health Information Protection Act, 2004* by a health information custodian, within the meaning of that Act, that is the institution or that is acting as part of the institution, of a request for access to a record, the provisions of that Act under which disclosure was refused and the number of occasions on which each provision was invoked;
- (d) the number of uses or purposes for which personal information is disclosed if the use or purpose is not included in the statements of uses and purposes set forth under clauses 34 (1) (d) and (e) of this Act or in any written public statement provided under subsection 16 (1) of the *Personal Health Information Protection Act, 2004* by the institution or a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* that is acting as part of the institution;
- (e) the amount of fees collected under section 45 of this Act by the institution and under subsection 54 (10) of the *Personal Health Information Protection Act, 2004* by the institution or a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* that is acting as part of the institution; and
- (f) any other information indicating an effort by the institution or by a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* that is acting as part of the institution to put into practice the purposes of this Act or the purposes of the *Personal Health Information Protection Act, 2004*. 2006, c. 19, Sched. N, s. 3 (4).

Separate information

(3) The information required by each of clauses (2) (a), (d), (e) and (f) shall be provided separately for,

- (a) each separate health information custodian that is the institution or that is acting as part of the institution; and
- (b) the institution other than in its capacity as a health information custodian and other than in its capacity as an institution containing a health information custodian. 2006, c. 19, Sched. N, s. 3 (4).

Same

(4) The information required by clause (2) (c) shall be provided separately for each separate health information custodian that is the institution or that is acting as part of the institution. 2006, c. 19, Sched. N, s. 3 (4).

PART II PROTECTION OF INDIVIDUAL PRIVACY

COLLECTION AND RETENTION OF PERSONAL INFORMATION

Application of Part

[27.](#) This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public. R.S.O. 1990, c. M.56, s. 27.

Personal information

[28. \(1\)](#) In this section and in section 29,

“personal information” includes information that is not recorded and that is otherwise defined as “personal information” under this Act.

Collection of personal information

[\(2\)](#) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity. R.S.O. 1990, c. M.56, s. 28.

Manner of collection

[29. \(1\)](#) An institution shall collect personal information only directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act*;
- (c) the Commissioner has authorized the manner of collection under clause 46 (c);
- (d) the information is in a report from a reporting agency in accordance with the *Consumer Reporting Act*;
- (e) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
- (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;
- (g) the information is collected for the purpose of law enforcement; or
- (h) another manner of collection is authorized by or under a statute. R.S.O. 1990, c. M.56, s. 29 (1).

Notice to individual

(2) If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection. R.S.O. 1990, c. M.56, s. 29 (2).

Exception

(3) Subsection (2) does not apply if,

- (a) the head may refuse to disclose the personal information under subsection 8 (1) or (2) (law enforcement), section 8.1 (*Civil Remedies Act, 2001*) or section 8.2 (*Prohibiting Profiting from Recounting Crimes Act, 2002*);
- (b) the Minister waives the notice; or
- (c) the regulations provide that the notice is not required. R.S.O. 1990, c. M.56, s. 29 (3); 2001, c. 28, s. 23 (3); 2002, c. 2, ss. 16 (3), 19 (10); 2007, c. 13, s. 45 (3).

Retention of personal information

30. (1) Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information.

Standard of accuracy

(2) The head of an institution shall take reasonable steps to ensure that personal information on the records of the institution is not used unless it is accurate and up to date.

Exception

(3) Subsection (2) does not apply to personal information collected for law enforcement purposes.

Disposal of personal information

(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations. R.S.O. 1990, c. M.56, s. 30.

USE AND DISCLOSURE OF PERSONAL INFORMATION

Use of personal information

31. An institution shall not use personal information in its custody or under its control except,

- (a) if the person to whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or
- (c) for a purpose for which the information may be disclosed to the institution under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act*. R.S.O. 1990, c. M.56, s. 31.

Where disclosure permitted

32. An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part I;
- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) if the disclosure is made to an officer, employee, consultant or agent of the institution who needs the record in the performance of their duties and if the disclosure is necessary and proper in the discharge of the institution's functions;
- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;
- (f) if disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
- (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;

- (i) in compassionate circumstances, to facilitate contact with the spouse, a close relative or a friend of an individual who is injured, ill or deceased;
- (j) to the Minister;
- (k) to the Information and Privacy Commissioner;
- (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs. R.S.O. 1990, c. M.56, s. 32; 2006, c. 19, Sched. N, s. 3 (5); 2006, c. 34, Sched. C, s. 15.

Consistent purpose

33. The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31 (b) and 32 (c) only if the individual might reasonably have expected such a use or disclosure. R.S.O. 1990, c. M.56, s. 33.

PERSONAL INFORMATION BANKS**Personal information bank index**

34. (1) A head shall make available for inspection by the public an index of all personal information banks in the custody or under the control of the institution setting forth, in respect of each personal information bank,

- (a) its name and location;
- (b) the legal authority for its establishment;
- (c) the types of personal information maintained in it;
- (d) how the personal information is used on a regular basis;
- (e) to whom the personal information is disclosed on a regular basis;
- (f) the categories of individuals about whom personal information is maintained;
and
- (g) the policies and practices applicable to the retention and disposal of the personal information.

Ensure accuracy

(2) The head shall ensure that the index is amended as required to ensure its accuracy. R.S.O. 1990, c. M.56, s. 34.

Inconsistent use or disclosure

35. (1) A head shall attach or link to personal information in a personal information bank,

- (a) a record of any use of that personal information for a purpose other than a purpose described in clause 34 (1) (d); and

- (b) a record of any disclosure of that personal information to a person other than a person described in clause 34 (1) (e).

Idem

(2) A record of use or disclosure under subsection (1) forms part of the personal information to which it is attached or linked. R.S.O. 1990, c. M.56, s. 35.

RIGHT OF INDIVIDUALS TO WHOM PERSONAL INFORMATION RELATES TO ACCESS AND
CORRECTION

Rights of access and correction**Right of access to personal information**

36. (1) Every individual has a right of access to,

- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
- (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

Right of correction

(2) Every individual who is given access under subsection (1) to personal information is entitled to,

- (a) request correction of the personal information if the individual believes there is an error or omission;
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement. R.S.O. 1990, c. M.56, s. 36.

Access

37. (1) An individual seeking access to personal information about the individual shall,

- (a) make a request in writing to the institution that the individual believes has custody or control of the personal information;
- (b) identify the personal information bank or otherwise identify the location of the personal information; and
- (c) at the time of making the request, pay the fee prescribed by the regulations for that purpose.

Access procedures

(2) Subsections 4 (2), 17 (1.1) and (2) and sections 18, 19, 20, 20.1, 21, 22 and 23 apply with necessary modifications to a request made under subsection (1). 1996, c. 1, Sched. K, s. 19.

Comprehensible form

(3) If access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner that indicates the general conditions under which the personal information is stored and used. R.S.O. 1990, c. M.56, s. 37 (3).

Exemptions

38. A head may refuse to disclose to the individual to whom the information relates personal information,

- (a) if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information;
- (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;
- (c) that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for the awarding of contracts and other benefits by an institution if the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;
- (c.1) if the information is supplied explicitly or implicitly in confidence and is evaluative or opinion material compiled solely for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
- (d) that is medical information if the disclosure could reasonably be expected to prejudice the mental or physical health of the individual; or
- (e) that is a research or statistical record. R.S.O. 1990, c. M.56, s. 38; 2001, c. 28, s. 23 (4); 2002, c. 2, ss. 16 (4), 19 (11); 2002, c. 18, Sched. K, s. 21; 2005, c. 28, Sched. J. s. 1.

**PART III
APPEAL****Right to appeal**

39. (1) A person may appeal any decision of a head under this Act to the Commissioner if,

- (a) the person has made a request for access to a record under subsection 17 (1);
- (b) the person has made a request for access to personal information under subsection 37 (1);
- (c) the person has made a request for correction of personal information under subsection 36 (2); or
- (d) the person is given notice of a request under subsection 21 (1). R.S.O. 1990, c. M.56, s. 39 (1).

Fee

[\(1.1\)](#) A person who appeals under subsection (1) shall pay the fee prescribed by the regulations for that purpose. 1996, c. 1, Sched. K, s. 20.

Time for application

[\(2\)](#) An appeal under subsection (1) shall be made within thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal. R.S.O. 1990, c. M.56, s. 39 (2).

Immediate dismissal

[\(2.1\)](#) The Commissioner may dismiss an appeal if the notice of appeal does not present a reasonable basis for concluding that the record or the personal information to which the notice relates exists. 1996, c. 1, Sched. K, s. 20.

Non-application

[\(2.2\)](#) If the Commissioner dismisses an appeal under subsection (2.1), subsection (3) and sections 40 and 41 do not apply to the Commissioner. 1996, c. 1, Sched. K, s. 20.

Notice of application for appeal

[\(3\)](#) Upon receiving a notice of appeal, the Commissioner shall inform the head of the institution concerned of the notice of appeal and may also inform any other institution or person with an interest in the appeal, including an institution within the meaning of the *Freedom of Information and Protection of Privacy Act*, of the notice of the appeal. 2006, c. 34, Sched. C, s. 16.

Mediator to try to effect settlement

[40.](#) The Commissioner may authorize a mediator to investigate the circumstances of any appeal and to try to effect a settlement of the matter under appeal. R.S.O. 1990, c. M.56, s. 40.

Inquiry

[41. \(1\)](#) The Commissioner may conduct an inquiry to review the head's decision if,

- (a) the Commissioner has not authorized a mediator to conduct an investigation under section 40; or

- (b) the Commissioner has authorized a mediator to conduct an investigation under section 40 but no settlement has been effected. 1996, c. 1, Sched. K, s. 21.

Procedure

(2) The *Statutory Powers Procedure Act* does not apply to an inquiry under subsection (1). R.S.O. 1990, c. M.56, s. 41 (2).

Inquiry in private

(3) The inquiry may be conducted in private. R.S.O. 1990, c. M.56, s. 41 (3).

Powers of Commissioner

(4) In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts I and II of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation. R.S.O. 1990, c. M.56, s. 41 (4).

Record not retained by Commissioner

(5) The Commissioner shall not retain any information obtained from a record under subsection (4). R.S.O. 1990, c. M.56, s. 41 (5).

Examination on site

(6) Despite subsection (4), a head may require that the examination of a record by the Commissioner be of the original at its site. R.S.O. 1990, c. M.56, s. 41 (6).

Notice of entry

(7) Before entering any premises under subsection (4), the Commissioner shall notify the head of the institution occupying the premises of his or her purpose. R.S.O. 1990, c. M.56, s. 41 (7).

Examination under oath

(8) The Commissioner may summon and examine on oath any person who, in the Commissioner's opinion, may have information relating to the inquiry and, for that purpose, the Commissioner may administer an oath. R.S.O. 1990, c. M.56, s. 41 (8).

Evidence privileged

(9) Anything said or any information supplied or any document or thing produced by a person in the course of an inquiry by the Commissioner under this Act is privileged in the same manner as if the inquiry were a proceeding in a court. R.S.O. 1990, c. M.56, s. 41 (9).

Protection

(10) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by the Commissioner is admissible in evidence in any court or any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person. R.S.O. 1990, c. M.56, s. 41 (10).

Idem

(11) A person giving a statement or answer in the course of an inquiry before the Commissioner shall be informed by the Commissioner of his or her right to object to answer any question under section 5 of the *Canada Evidence Act*. R.S.O. 1990, c. M.56, s. 41 (11).

Prosecution

(12) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with a requirement of the Commissioner under this section. R.S.O. 1990, c. M.56, s. 41 (12).

Representations

(13) The person who requested access to the record, the head of the institution concerned and any other institution or person informed of the notice of appeal under subsection 39 (3) shall be given an opportunity to make representations to the Commissioner, but no person is entitled to have access to or to comment on representations made to the Commissioner by any other person or to be present when such representations are made. 2006, c. 34, Sched. C, s. 17 (1).

Right to representation

(14) Each of the following may be represented by a person authorized under the *Law Society Act* to represent them:

1. The person who requested access to the record.
2. The head of the institution concerned.
3. Any other institution or person informed of the notice of appeal under subsection 39 (3). 2006, c. 34, Sched. C, s. 17 (5).

Burden of proof

42. If a head refuses access to a record or a part of a record, the burden of proof that the record or the part falls within one of the specified exemptions in this Act lies upon the head. R.S.O. 1990, c. M.56, s. 42.

Order

43. (1) After all of the evidence for an inquiry has been received, the Commissioner shall make an order disposing of the issues raised by the appeal.

Idem

(2) If the Commissioner upholds a decision of a head that the head may refuse to disclose a record or a part of a record, the Commissioner shall not order the head to disclose the record or part. R.S.O. 1990, c. M.56, s. 43 (1, 2).

Conditions

(3) Subject to this Act, the Commissioner's order may contain any conditions the Commissioner considers appropriate. R.S.O. 1990, c. M.56, s. 43 (3); 1996, c. 1, Sched. K, s. 22.

Notice of order

(4) The Commissioner shall give the appellant and the persons who received notice of the appeal under subsection 39 (3) written notice of order. R.S.O. 1990, c. M.56, s. 43 (4).

Delegation

44. The Commissioner shall not delegate to a person other than an Assistant Commissioner his or her power to require a record referred to in section 8 to be produced and examined. R.S.O. 1990, c. M.56, s. 44.

**PART IV
GENERAL****Fees**

45. (1) A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record. 1996, c. 1, Sched. K, s. 23 (1).

(2) Repealed: 1996, c. 1, Sched. K, s. 23 (1).

Estimate of costs

(3) The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25. R.S.O. 1990, c. M.56, s. 45 (3).

Waiver of payment

(4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);

- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety; and
- (d) any other matter prescribed in the regulations. R.S.O. 1990, c. M.56, s. 45 (4); 1996, c. 1, Sched. K, s. 23 (2).

Review

(5) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the amount of the fee or the head's decision not to waive the fee. R.S.O. 1990, c. M.56, s. 45 (5); 1996, c. 1, Sched. K, s. 23 (3).

Disposition of fees

(6) The fees provided in this section shall be paid and distributed in the manner and at the times prescribed in the regulations. 1996, c. 1, Sched. K, s. 23 (4).

Powers and duties of Commissioner

46. The Commissioner may,

- (a) offer comment on the privacy protection implications of proposed programs of institutions;
- (b) after hearing the head, order an institution to,
 - (i) cease a collection practice that contravenes this Act, and
 - (ii) destroy collections of personal information that contravene this Act;
- (c) in appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual;
- (d) engage in or commission research into matters affecting the carrying out of the purposes of this Act;
- (e) conduct public education programs and provide information concerning this Act and the Commissioner's role and activities; and
- (f) receive representations from the public concerning the operation of this Act. R.S.O. 1990, c. M.56, s. 46.

Regulations

47. (1) The Lieutenant Governor in Council may make regulations,

- (0.a) prescribing standards for determining what constitutes reasonable grounds for a head to conclude that a request for access to a record is frivolous or vexatious;
- (a) respecting the procedures for access to original records under section 23;

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by the Statutes of Ontario, 2006, chapter 34, Schedule C, section 18 by adding the following clause:

(a.1) requiring the head of an institution to assist persons with disabilities in making requests for access under subsection 17 (1) or 37 (1);

See: 2006, c. 34, Sched. C, ss. 18, 29 (1).

- (b) prescribing the circumstances under which records capable of being produced from machine readable records are not included in the definition of “record” for the purposes of this Act;
- (c) setting standards for and requiring administrative, technical and physical safeguards to ensure the security and confidentiality of records and personal information under the control of institutions;

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by the Statutes of Ontario, 2006, chapter 34, Schedule C, section 18 by adding the following clause:

(c.1) providing for procedures to be followed by an institution if personal information is disclosed in contravention of this Act;

See: 2006, c. 34, Sched. C, ss. 18, 29 (1).

- (d) setting standards for the accuracy and completeness of personal information that is under the control of an institution;
- (e) prescribing time periods for the purposes of subsection 30 (1);

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by the Statutes of Ontario, 2006, chapter 34, Schedule C, section 18 by adding the following clause:

(e.1) respecting the disposal of personal information under subsection 30 (4), including providing for different procedures for the disposal of personal information based on the sensitivity of the personal information;

See: 2006, c. 34, Sched. C, ss. 18, 29 (1).

- (f) prescribing the amount, the manner of payment and the manner of allocation of fees described in clause 17 (1) (c) or 37 (1) (c), subsection 39 (1.1) or section 45 and the times at which they are required to be paid;
- (g) prescribing matters to be considered in determining whether to waive all or part of the costs required under section 45;

- (h) designating any agency, board, commission, corporation or other body as an institution;
- (i) prescribing circumstances under which the notice under subsection 29 (2) is not required;
- (j) prescribing conditions relating to the security and confidentiality of records used for a research purpose;
- (k) prescribing forms and providing for their use;
- (l) respecting any matter the Lieutenant Governor in Council considers necessary to carry out effectively the purposes of this Act. R.S.O. 1990, c. M.56, s. 47; 1996, c. 1, Sched. K, s. 24 (1, 2).

Categories of fees

(2) A regulation made under clause (1) (f) may prescribe a different amount, manner of payment, manner of allocation or time of payment of fees for different categories of records or persons requesting access to a record. 1996, c. 1, Sched. K, s. 24 (3).

Offences

48. (1) No person shall,

- (a) wilfully disclose personal information in contravention of this Act;
- (b) wilfully maintain a personal information bank that contravenes this Act;
- (c) make a request under this Act for access to or correction of personal information under false pretences;
- (d) wilfully obstruct the Commissioner in the performance of his or her functions under this Act;
- (e) wilfully make a false statement to mislead or attempt to mislead the Commissioner in the performance of his or her functions under this Act; or
- (f) wilfully fail to comply with an order of the Commissioner.

Penalty

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine not exceeding \$5,000.

Consent of Attorney General

(3) A prosecution shall not be commenced under clause (1) (d), (e) or (f) without the consent of the Attorney General. R.S.O. 1990, c. M.56, s. 48.

Delegation, civil proceedings**Delegation of head's powers**

49. (1) A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution or another institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation. R.S.O. 1990, c. M.56, s. 49 (1); 2006, c. 34, Sched. C, s. 19.

Protection from civil proceeding

(2) No action or other proceeding lies against a head, or against a person acting on behalf or under the direction of the head, for damages resulting from the disclosure or non-disclosure in good faith of a record or any part of a record under this Act, or from the failure to give a notice required under this Act if reasonable care is taken to give the required notice. R.S.O. 1990, c. M.56, s. 49 (2).

Vicarious liability of institutions preserved

(3) Subsection (2) does not relieve an institution from liability in respect of a tort committed by a head or a person mentioned in subsection (2) to which it would otherwise be subject and the institution is liable for any such tort in a like manner as if subsection (2) had not been enacted. R.S.O. 1990, c. M.56, s. 49 (3).

Informal access**Oral requests**

50. (1) If a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request.

Pre-existing access preserved

(2) This Act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by statute, custom or practice immediately before the 1st day of January, 1991. R.S.O. 1990, c. M.56, s. 50.

Information otherwise available

51. (1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation.

Powers of courts and tribunals

(2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document. R.S.O. 1990, c. M.56, s. 51.

Application of Act

52. (1) This Act applies to any record in the custody or under the control of an institution regardless of whether it was recorded before or after the 1st day of January, 1991. R.S.O. 1990, c. M.56, s. 52 (1).

Non-application of Act

(2) This Act does not apply to records placed in the archives of an institution by or on behalf of a person or organization other than the institution. R.S.O. 1990, c. M.56, s. 52 (2).

Same

(2.1) This Act does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed. 2006, c. 34, Sched. C, s. 20.

Same

(3) Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest. 1995, c. 1, s. 83.

Exception

(4) This Act applies to the following records:

1. An agreement between an institution and a trade union.
2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.
4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment. 1995, c. 1, s. 83.

Other Acts

53. (1) This Act prevails over a confidentiality provision in any other Act unless the other Act or this Act specifically provides otherwise. R.S.O. 1990, c. M.56, s. 53 (1).

Idem

(2) The following confidentiality provisions prevail over this Act:

1. Subsection 88 (6) of the *Municipal Elections Act, 1996*.

2. Subsection 53 (1) of the *Assessment Act*. R.S.O. 1990, c. M.56, s. 53 (2); 1996, c. 32, s. 77.

Exercise of rights of deceased, etc., persons

- 54.** Any right or power conferred on an individual by this Act may be exercised,
- (a) if the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;
 - (b) by the individual's attorney under a continuing power of attorney, the individual's attorney under a power of attorney for personal care, the individual's guardian of the person, or the individual's guardian of property; and
 - (c) if the individual is less than sixteen years of age, by a person who has lawful custody of the individual. R.S.O. 1990, c. M.56, s. 54; 1992, c. 32, s. 23; 1996, c. 2, s. 73.
- 55.** Repealed: 2006, c. 34, Sched. C, s. 21.
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Municipal Freedom of Information and Protection of Privacy Act**R.R.O. 1990, REGULATION 823****GENERAL**

Consolidation Period: From April 10, 2012 to the [e-Laws currency date](#).

Last amendment: O. Reg. 47/12.

This is the English version of a bilingual regulation.

1. A record capable of being produced from machine readable records is not included in the definition of “record” for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution. R.R.O. 1990, Reg. 823, s. 1.

2. (1) A head who provides access to an original record must ensure the security of the record. R.R.O. 1990, Reg. 823, s. 2 (1).

(2) A head may require that a person who is granted access to an original record examine it at premises operated by the institution. R.R.O. 1990, Reg. 823, s. 2 (2).

(3) A head shall verify the identity of a person seeking access to his or her own personal information before giving the person access to it. R.R.O. 1990, Reg. 823, s. 2 (3).

3. (1) Every head shall ensure that reasonable measures to prevent unauthorized access to the records in his or her institution are defined, documented and put in place, taking into account the nature of the records to be protected. R.R.O. 1990, Reg. 823, s. 3 (1).

(2) Every head shall ensure that only those individuals who need a record for the performance of their duties shall have access to it. R.R.O. 1990, Reg. 823, s. 3 (2).

(3) Every head shall ensure that reasonable measures to protect the records in his or her institution from inadvertent destruction or damage are defined, documented and put in place, taking into account the nature of the records to be protected. R.R.O. 1990, Reg. 823, s. 3 (3).

4. (1) An institution is not required to give notice of the collection of personal information to an individual to whom it relates if the head complies with subsection (2) and if,

(a) providing notice would frustrate the purpose of the collection;

- (b) providing notice might result in an unjustifiable invasion of another individual's privacy; or
- (c) the collection is for the purpose of determining suitability or eligibility for an award or honour. R.R.O. 1990, Reg. 823, s. 4 (1).

(2) For the purpose of subsection (1), the head shall make available for public inspection a statement describing the purpose of the collection of personal information and the reason that notice has not been given. R.R.O. 1990, Reg. 823, s. 4 (2).

5. Personal information that has been used by an institution shall be retained by the institution for the shorter of one year after use or the period set out in a by-law or resolution made by the institution or made by another institution affecting the institution, unless the individual to whom the information relates consents to its earlier disposal. R.R.O. 1990, Reg. 823, s. 5.

5.1 Ahead of an institution that receives a request for access to a record or personal information shall conclude that the request is frivolous or vexatious if,

- (a) the head is of the opinion on reasonable grounds that the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or
- (b) the head is of the opinion on reasonable grounds that the request is made in bad faith or for a purpose other than to obtain access. O. Reg. 22/96, s. 1.

5.2 The fee that shall be charged for the purposes of clause 17 (1) (c) or 37 (1) (c) of the Act shall be \$5. O. Reg. 22/96, s. 1.

5.3 (1) For the purposes of subsection 39 (1.1) of the Act, the fee payable for appealing a decision of a head to the Commissioner shall be,

- (a) \$25, if the person appealing has made a request for access to a record under subsection 17 (1);
- (b) \$10, if the person appealing has made a request for access to personal information under subsection 37 (1); and
- (c) \$10, if the person appealing has made a request for correction of personal information under subsection 36 (2). O. Reg. 22/96, s. 1.

(2) For the purposes of subsection 39 (1.1) of the Act, no fee is payable for appealing a decision of a head to the Commissioner if the person appealing is given notice of a request under subsection 21 (1) of the Act. O. Reg. 22/96, s. 1.

6. The following are the fees that shall be charged for the purposes of subsection 45 (1) of the Act for access to a record:

1. For photocopies and computer printouts, 20 cents per page.

2. For records provided on CD-ROMs, \$10 for each CD-ROM.
3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.
5. For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.
6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received. O. Reg. 22/96, s. 2; O. Reg. 93/07, s. 1.

6.1 The following are the fees that shall be charged for the purposes of subsection 45 (1) of the Act for access to personal information about the individual making the request for access:

1. For photocopies and computer printouts, 20 cents per page.
2. For records provided on CD-ROMs, \$10 for each CD-ROM.
3. For developing a computer program or other method of producing the personal information requested from machine readable record, \$15 for each 15 minutes spent by any person.
4. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the personal information requested if those costs are specified in an invoice that the institution has received. O. Reg. 22/96, s. 2; O. Reg. 93/07, s. 2.

7. (1) If a head gives a person an estimate of an amount payable under the Act and the estimate is \$100 or more, the head may require the person to pay a deposit equal to 50 per cent of the estimate before the head takes any further steps to respond to the request. O. Reg. 22/96, s. 3.

(2) A head shall refund any amount paid under subsection (1) that is subsequently waived. R.R.O. 1990, Reg. 823, s. 7 (2).

8. The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act:

1. Whether the person requesting access to the record is given access to it.
2. If the amount of a payment would be \$5 or less, whether the amount of the payment is too small to justify requiring payment. R.R.O. 1990, Reg. 823, s. 8.

9. If a person is required to pay a fee for access to a record, the head may require the person to do so before giving the person access to the record. R.R.O. 1990, Reg. 823, s. 9.

10. (1) The following are the terms and conditions relating to security and confidentiality that a person is required to agree to before a head may disclose personal information to that person for a research purpose:

1. The person shall use the information only for a research purpose set out in the agreement or for which the person has written authorization from the institution.
2. The person shall name in the agreement any other persons who will be given access to personal information in a form in which the individual to whom it relates can be identified.
3. Before disclosing personal information to other persons under paragraph 2, the person shall enter into an agreement with those persons to ensure that they will not disclose it to any other person.
4. The person shall keep the information in a physically secure location to which access is given only to the person and to the persons given access under paragraph 2.
5. The person shall destroy all individual identifiers in the information by the date specified in the agreement.
6. The person shall not contact any individual to whom personal information relates directly or indirectly without the prior written authority of the institution.
7. The person shall ensure that no personal information will be used or disclosed in a form in which the individual to whom it relates can be identified without the written authority of the institution.
8. The person shall notify the institution in writing immediately if the person becomes aware that any of the conditions set out in this section have been breached. R.R.O. 1990, Reg. 823, s. 10 (1).

(2) An agreement relating to the security and confidentiality of personal information to be disclosed for a research purpose shall be in Form 1. R.R.O. 1990, Reg. 823, s. 10 (2); O. Reg. 35/11, s. 1.

11. A request for access to a record under Part I of the Act or for access to or correction of personal information under Part II of the Act shall be in a written form that specifies that it is a request made under the Act. O. Reg. 47/12, s. 1.

FORM 1
AGREEMENT

Municipal Freedom of Information and Protection of Privacy Act

This agreement is made between name of researcher, referred to below as the researcher, and name of institution, referred to below as the institution.

The researcher has requested access to the following records that contain personal information and are in the custody or under the control of the institution: (Describe the records below)

.....

The researcher understands and promises to abide by the following terms and conditions:

1. The researcher will not use the information in the records for any purpose other than the following research purpose unless the researcher has the institution's written authorization to do so: (Describe the research purpose below)

.....

2. The researcher will give access to personal information in a form in which the individual to whom it relates can be identified only to the following persons: (Name the persons below)

.....

3. Before disclosing personal information to persons mentioned above, the researcher will enter into an agreement with those persons to ensure that they will not disclose it to any other person.

4. The researcher will keep the information in a physically secure location to which access is given only to the researcher and to the persons mentioned above.

5. The researcher will destroy all individual identifiers in the information by (date)

6. The researcher will not contact any individual to whom personal information relates directly or indirectly without the prior written authority of the institution.

7. The researcher will ensure that no personal information will be used or disclosed in a form in which the individual to whom it relates can be identified without the written authority of the institution.

8. The researcher will notify the institution in writing immediately upon becoming aware that any of the conditions set out in this agreement have been breached.

Signed at this day of, 199.....

Researcher Name: Address: Telephone: Representative of Institution Name: Position: Institution: Address: Telephone: