

ACCESSING GOVERNMENT INFORMATION IN

Alberta

RESOURCES

Freedom of Information and Protection of Privacy Act (FOIP)

<http://www3.gov.ab.ca/foip/legislation/index.cfm>

FOIP Guide

http://www3.gov.ab.ca/foip/other_resources/publications_videos/foip_guide.cfm

FOIP Guidelines and Practices 2005

http://www3.gov.ab.ca/foip/guidelines_practices/2005/index.cfm

Office of the Information and Privacy Commissioner of Alberta

<http://www.oipc.ab.ca/>

Disclaimer:

We have attempted to ensure that the information provided in this Manual is reasonably accurate and complete as of December 2005. However, we cannot guarantee complete accuracy or comprehensiveness; you should consult the relevant legislation and authorities if you seek fully accurate, complete, and up-to-date information.

Moreover, this Manual provides information of a general nature and does not constitute legal advice. Should you need legal advice, seek a lawyer.

Please report any errors or omissions in this Manual to cippic@uottawa.ca

WHO CAN REQUEST GOVERNMENT INFORMATION?

Anyone can request government information.

WHAT INFORMATION CAN I ACCESS?

You have the right to access any record under the control of a public body, subject to certain exceptions described below. Public bodies include provincial government departments, agencies, boards and commissions; local government bodies such as municipalities and police agencies; educational bodies such as school boards and post secondary institutions; and health-care bodies.

WHAT ARE THE EXCEPTIONS TO MY RIGHT OF ACCESS?

There are a number of circumstances in which you may be denied access to information, including the following:

Publicly available information

You may be denied access to information that is available to the public. This includes information for which you must pay a fee and information that will be made available to the public within 60 days of the date when the request is received.

If your request is refused because the information will be available within 60 days, the public body must inform you when it becomes available. If it is still not available after 60 days, the public body cannot deny access on the basis that the information will later be made public.

Repetitive or frivolous request

Your access request may be refused if it is found to be repetitive or frivolous. In order to reject your access request on these grounds, a public body must get authorization from the Commissioner.

Another Act prevails

If an Act specifies that *FOIP* does not apply, you cannot access information governed by that Act.

Law enforcement and legal proceedings

Your access request may be refused if disclosure could be harmful to law enforcement. This includes information that would: jeopardize national security; reveal investigative

techniques or details of an investigation; reveal confidential information; endanger anyone; deny someone a fair trial or otherwise harm legal proceedings; expose its source to civil liability; or facilitate the escape of an inmate. In addition, if the disclosure of information is prohibited by law, your request for access will be denied. Furthermore, the public body may refuse to confirm or deny the existence of such information.

Your request for information may be granted, however, if it relates to reports of routine inspections carried out to ensure compliance with Alberta law or to reports evaluating law enforcement programs.

Privileged information

Your request for information may be denied if the information is protected by legal privilege such as solicitor-client privilege.

Advice

Unless the public body consents, or unless the information is more than 15 years old, you cannot access records that could reveal advice to or from public bodies. The term 'advice' is used broadly and includes opinions, recommendations, proposals, analyses, policy options, consultations, deliberations, material relating to negotiations on behalf of the Government of Alberta, unimplemented administrative plans, draft law at the executive level, research or audit reports, agendas or minutes of meetings, or any information that could likely result in disclosure of a pending policy or budgetary decision.

Note that the advice exception does not apply to certain information such as:

- scientific or technical research;
- guidelines issued to employees;
- statements of reasons for using discretionary power; and
- rules or policies for interpreting law or administering a program.

Cabinet and Treasury Board confidences

Your request will be refused if disclosure would reveal the substance of deliberations of the Executive Council, the Treasury Board or their committees. This includes information contained in agendas, policy analyses, proposals and draft legislation.

This exception does not apply when, for example,:

- the information is at least 15 years old; or
- the information is found in an appeal decision by the Executive Council; or
- the purpose of the record is to provide background information to the Executive Council or Treasury Board and one of the following applies: the decision has been made public, or the decision has been implemented, or the decisions was

made at least five years ago.

Local public body confidences

Your request may be refused if disclosure could reveal a draft regulation or bylaw or the substance of a confidential meeting. This exception does not apply to information considered in a meeting open to the public, or information that has been in existence for 15 years or more.

Relations with other governments

Your request may be refused if disclosure could harm relations between Alberta and other governments, including local, Canadian and foreign governments. If, however, the information is at least 15 years old or the relevant government body consents to disclosure, this exception does not apply.

Economic and other interests of a public body

Your access to information request may be refused if disclosure could harm the economic interests of a public body. Information under this heading includes: public body trade secrets; information in which a public body has a proprietary interest; information whose disclosure could lead to financial loss or prejudice a competitive position, and research conducted by employees of the province.

However, this exception does not apply to results of product or environmental tests unless the purpose of the test was to develop testing methods or to determine whether a product should be purchased.

Conservation

Your access request may be denied if disclosure could harm conservation efforts. This includes the conservation of: heritage sites, historic objects or works; and rare, endangered, threatened or vulnerable life forms.

Testing procedures, tests and audits

You may be denied access to information related to testing or auditing procedures, or to details of specific future tests or audits, if disclosure could prejudice the tests or audits.

Business interests of third parties

You may be denied access to information related to a third party's business interests if three

criteria are met. First, the information must relate to a third party's trade secrets or other information of a commercial, financial, scientific or technical nature. Second, the information must have been supplied to the public body in confidence. Third, disclosure must be reasonably likely to harm the third party's business interests, or result in undue financial loss or gain to a third party, or reveal information about labour relations, or have a chilling effect on third parties' willingness to provide such information to public bodies.

However, this exception does not apply when:

- the third party consents to the disclosure;
- another Act requires disclosure;
- the information relates to a non-arm's length transaction between a public body and another party; or
- the record is in the custody or control of an archives and is at least 50 years old.

Third party privacy

Your access request will be denied if the disclosure would be an unreasonable invasion of a third party's personal privacy. Disclosure is presumed to be an unreasonable invasion of a third party's personal privacy if the record contains:

- personal health information;
- information that is part of a law enforcement record (except to the extent that disclosure is necessary to pursue prosecution);
- information that could reveal the source of confidential law enforcement information;
- financial information related to a third party's taxation, income, financial situation or receipt of social assistance;
- a third party's personal recommendations, character references or personnel evaluations;
- a third party's employment or educational history; and
- information revealing the race, ethnic origin, religious or political beliefs, or sexual orientation of a third party.

In addition to the list above, other information may violate a third party's privacy. In determining whether disclosure constitutes an unreasonable invasion of a third party's personal privacy, a public body must consider all relevant circumstances including:

- whether disclosure is desirable in order to subject the activities of a public body to public scrutiny;
- whether disclosure is likely to promote public health and safety or the protection of the environment;
- whether disclosure will help determine an applicant's rights;
- whether disclosure could expose a third party to harm, including damage to one's reputation;
- whether the information has been provided in confidence;

- whether disclosure would assist in researching or validating the claims or grievances of aboriginal people;
- whether the information is accurate and reliable; and
- whether the applicant originally provided the information.

Circumstances that weigh in favor of disclosure include:

- when the relevant third party consents to disclosure;
- when there are compelling circumstances affecting anyone's health or safety;
- when another Act expressly allows or requires disclosure;
- when the information relates to a public body employee's salary, classification, benefits, or expenses;
- when the information relates to a goods or services contract with a public body;
- when the information relates to a financial discretionary benefit to a third party;
- when the information relates to someone who has been dead for more than 25 years; and
- when disclosure is limited to information related to educational records or awards received and isn't contrary to the public interest.

Archived records

You cannot access archived records that were acquired from private parties – that is, from people or entities other than public bodies. If the information you want was placed in an archives by a private party, contact that party directly and ask permission to access the information.

Individual or public safety

Your access request may be denied if disclosure could threaten individual or public safety.

Exceptions related to personal information

For exceptions more relevant to personal information, see *Accessing Personal Information in Alberta*.

HOW DO I MAKE A REQUEST?

1. Check whether the information is publicly available

The Alberta government publishes a directory of records that is available at a variety of public libraries throughout the province. The latest edition is from 1995.

2. Contact public bodies

Call the public body and ask if it is willing to provide access to the information you want.

Such informal methods can be effective, especially when the information you are requesting may be refused under one of the grounds above. Note, however, that informal access-to-information requests do not trigger time limits for responding to you, nor do they trigger certain rights, such as the right to request a review to the Commissioner”.

Contact information can be found at: <http://www3.gov.ab.ca/foip/coordinators/index.cfm>

3. Identify the appropriate public bodies

a) Determine whether the body is subject to access to information law

All bodies subject to the Act can be found at the following websites:

<http://www3.gov.ab.ca/foip/coordinators/index.cfm>

<http://www3.gov.ab.ca/foip/legislation/regulation/page19.cfm>

b) Determine whether the information is in the custody or control of the public body

Access-to-information laws only apply to records in the custody or control of a public body. If a record is destroyed, it is no longer in the custody or control of a public body, but it is an offence to wilfully destroy records in order to evade an access request.

4. Frame your request carefully

a) Use government directories to identify likely sources of information

The government of Alberta publishes a directory of records which is available at several public libraries in Alberta.

b) Request "records"

Request access to records, not to information, because "record" has a specific and broad definition which includes: "notes, images, audiovisual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records."

c) Request indexes, catalogues, and other records-management aids

If you are seeking information that spans a broad area or could involve many records, you should first consider requesting indexes, file lists, file plans, and other records-management aids. These records of records can help you narrow your request and choose only the most

relevant materials. This process can also shed light on other issues you may not have been aware of. The only drawback is that this is a two step request process: once you decide which records you would like, you must file another request to which the public body will have 30 days to respond.

As an example, one research team phrased its request as follows:

Records Management: We request all records related to the handling of records by the Smart Card Project. These include, but are not limited to: policies; standards; and procedures and practices concerning the collection, cataloguing, organization, access, security, retention, disposal, status, and audit trails pertinent to the project ... We also request any indices, catalogues, finding aids, databases, meta-data, and the like intended to facilitate management of, and access to, the records and documents relevant to the Smart Card Project.

d) Consider stating the purpose of your request

You are not required to state the purpose of your request, but doing so may help the public body locate the information more quickly.

e) Be specific

Unless absolutely necessary, try not to ask for all records related to a subject. The more narrow and specific your request is, the faster you will get a response and the less it will cost you. In addition, a narrow request is less likely to result in a time limit extension because it is unlikely to interfere unreasonably with the operations of the public body.

5. Consider a continuing request

You can ask that any new information matching your request be sent to you for up to 2 years.

6. If you need help

If you need help, ask the relevant public body. It is required to help you with your request and to respond openly, accurately and completely.

DO I HAVE TO USE A FORM?

You do not have to use a form, but your request must be made in writing. A form is available, however, and it can help you structure your request. The form can be found at:

<http://www.oipc.ab.ca/publications/foip.cfm>

WHAT WILL IT COST?

Fees in Alberta cannot exceed actual costs. The Act allows for an initial fee of \$25 for a one-time request for government information and of \$50 for continuing requests. (Note that these fees do not apply to personal information.) Fees cover the cost of locating, retrieving and producing the record, preparing it for disclosure, copying it, supervising its inspection and shipping it. If the actual cost of these activities exceeds \$150, the public body may charge you additional fees. However, individual public bodies may impose lower fees, or none at all.

The public body will send you an estimate of the total fee before it begins any search on your behalf. If you do not reply within 30 days, the body will assume you have abandoned your request and no further action will be taken. If you agree to the fee, a deposit may be required.

If the actual cost of processing your request is less than the estimate, you only pay the actual cost. In rare situations, the actual cost exceeds the estimate, in which case the public body may try to come to an agreement with you as to any additional fee.

You may ask to have some or all of the fees waived. This request may be granted if:

- you can't afford the fee, or it would otherwise be fair to waive the fee; or
- releasing the information is in the public interest and relates to the environment or to public health or safety.

The public body must reply to your fee-waiver request within 30 days. You may ask the Commissioner to review the public body's response to your fee waiver request.

HOW LONG WILL IT TAKE?

The public body must make every reasonable effort to respond to your request within 30 days of receiving it. If your request is transferred to another public body, the transfer must be done within 15 days and the new body must respond to you within 30 days of receiving your request.

A transfer to another body is only allowed when:

- the record is in the custody or under the control of the public body to which your request is being transferred; or
- the record originated with, or was first obtained by, the public body to which your request is being transferred.

A public body can extend the time limit for responses by up to 30 days or, with the Commissioner's permission, for a longer period. The time period may only be extended once and only when:

- your request does not provide enough detail for the public body to identify the

- requested record;
- you have requested a large number of records and responding within 30 days would unreasonably interfere with the operations of the public body;
- the public body needs time to consult with a third party or another public body before deciding whether to grant access to a record; or
- a third party requests that the Commissioner review a public body's decision to grant access to third party information.

Unless an extension has been granted, failure to respond to a request within 30 days is considered a denial of access. You may request that the Commissioner review a public body's failure to respond or its denial of access.

WHAT ARE MY OPTIONS REGARDING FORMAT?

Copies v. originals

You may have copies sent to you or you may view the originals. A public body may impose one format (copy or original) depending on considerations of length, condition, and form.

Language

In Alberta, you do not have the option of requesting that information be provided in a language other than English.

Alternative formats

A public body is not required to provide records in alternative formats for the hearing or seeing impaired. It will nevertheless often try to accommodate such requests.

WHAT CAN I DO IF MY REQUEST FOR ACCESS IS DENIED?

If you are not satisfied with a public body's response, you have the right to request that the Office of the Information and Privacy Commissioner review that decision. For more information, see *Appealing Access to Information Decisions in Alberta*.