

This document contains sections of the *Freedom of Information and Protection of Privacy Act* and the changes to the *Act* as proposed in the Ontario Budget filed May 11, 2005. The changes noted below are specified in **Bill 197, 2005 *An Act to implement Budget measures*** (May 11, 2005). Any errors or omissions in transcription and/or comparing changes are entirely ours.

Economic and other interests of Ontario

- 18.** (1) A head may refuse to disclose a record that contains,
- (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
 - (b) information obtained through research by an employee of an institution where the disclosure could reasonably be expected to deprive the employee of priority of publication;
 - (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
 - (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;
 - (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 or the Government of Ontario;
 - (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 where 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) information relating to specific tests or testing procedures or techniques that are to be used for an educational purpose, if disclosure could reasonably be expected to prejudice the use or results of the tests or testing procedures or techniques;
 - (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. F.31, s. 18 (1); 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. K, s. 7.

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Exception

- (2) A head shall not refuse under subsection (1) to disclose a record that contains the results of product or environmental testing carried out by or for an institution, unless,
- (a) the testing was done as a service to a person, a group of persons or an organization other than an institution and for a fee; or
 - (b) the testing was conducted as preliminary or experimental tests for the purpose of developing methods of testing. R.S.O. 1990, c. F.31, s. 18 (2).

Information with respect to closed meetings

18.1 (1) A head may refuse to disclose a record that reveals the substance of deliberations of a meeting of the governing body or a committee of the governing body of an educational institution if a statute authorizes holding the meeting in the absence of the public and the subject-matter of the meeting.

- (a) is a draft of a by-law, resolution or legislation; or
- (b) is litigation or possible litigation.

Exception

- (2) Despite subsection (1), the head shall not refuse to disclose a record under subsection (1) if,
- (a) the information is not held confidentially;
 - (b) the subject-matter of the deliberations has been considered in a meeting open to the public; or
 - (c) the record is more than 20 years old.

Application of Act

- (3) The exemption in subsection (1) is in addition to any other exemptions in this Act.

Solicitor-client privilege

19. A head may refuse to disclose a record,

(a) that is subject to solicitor-client privilege;

(b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation; or

(c) that was prepared by or for counsel employed or retained by an educational institution for use in giving legal advice or in contemplation of or for use in litigation.

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Use of personal information

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

(a) where 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;

(c) for a purpose for which the information may be disclosed to the institution under section 42 or under section 32 of the *Municipal Freedom of Information and Protection of Privacy Act*. R.S.O. 1990, c. F.31, s. 41; or

(d) subject to subsection (2), an educational institution may use personal information in its alumni records for the purpose of its own fundraising activities, if the personal information is reasonably necessary for the fundraising activities.

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Notice on using personal information for fundraising

(2) In order to use personal information in its alumni records for the purpose of its own fundraising activities, an educational institution shall,

(a) give notice to the individual to whom the personal information relates when the individual is first contacted for the purpose of soliciting funds for fundraising of his or her right to request that the information cease to be used for fundraising purposes;

(b) periodically and in the course of soliciting funds for fundraising, give notice to the individual to whom the personal information relates of his or her right to request that the information cease to be used for fundraising purposes; and

(c) periodically and in a manner that is likely to come to the attention of individuals who may be solicited for fundraising, publish a notice of the individual's right to request that the individual's personal information cease to be used for fundraising purposes.

Discontinuing use of personal information

(3) An educational institution shall, when requested to do so by an individual, cease to use the individual's personal information under clause (1) (d).

Where disclosure permitted

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

(a) in accordance with Part II;

(b) where 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) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where 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 or a treaty, agreement or arrangement thereunder;

(f) where 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) where 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 thereof is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (j) to a member of the Legislative Assembly who has been authorized by a constituent to whom the information relates to make an inquiry on the constituent's behalf or, where the constituent is incapacitated, has been authorized by the next of kin or legal representative of the constituent;
- (k) to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf or, where the employee is incapacitated, has been authorized by the next-of-kin or legal representative of the employee;
- (l) to the responsible minister;
- (m) to the Information and Privacy Commissioner;
- (n) to the Government of Canada in order to facilitate the auditing of shared cost programs. R.S.O. 1990, c. F.31, s. 42; and

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(o) subject to subsection (2), an educational institution may disclose personal information in its alumni records for the purpose of its own fundraising activities if,

- (i) the educational institution and the person to whom the information is disclosed have entered into a written agreement that satisfies the requirements of subsection (3), and
- (ii) the personal information is reasonably necessary for the fundraising activities.

Notice on disclosing personal information for fundraising

(2) In order to disclose personal information in its alumni records for the purpose of its own fundraising activities, an educational institution shall ensure that,

- (a) notice is given to the individual to whom the personal information relates when the individual is first contacted for the purpose of soliciting funds for fundraising of his or her right to request that the information cease to be disclosed for fundraising purposes;
- (b) periodically and in the course of soliciting funds for fundraising, notice is given to the individual to whom the personal information relates of his or her right to request that the information cease to be disclosed for fundraising purposes; and
- (c) periodically and in a manner that is likely to come to the attention of individuals who may be solicited for fundraising, notice is published in respect of the individual's right to request that the individual's personal information cease to be disclosed for fundraising purposes.

Fundraising agreement

(2) An agreement between an educational institution and another person for the disclosure of personal information in the educational institution's alumni records for fundraising activities must,

- (a) require that the notice requirements in subsection (2) are met;
- (b) require that the personal information disclosed under clause (1) (o) be disclosed to the individual to whom the information relates upon his or her request; and
- (c) require that the person to whom the information is disclosed shall cease to use the personal information of any individual who requests that the information not be used.

Exemptions

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

- (a) where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information;
- (b) where 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 government contracts and other benefits where 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;

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(c.1) if the information is supplied explicitly or implicitly in confidence and is evaluative or opinion material compiled solely for the purpose of:

(i) assessing the teaching materials or research of an employee of an educational institution or of a person associated with an educational institution,

(ii) determining suitability, eligibility or qualifications for admission to an academic program of an educational institution, or

(iii) determining suitability for an honour or award to recognize outstanding achievement or distinguished service;

Application of Act

65. (1) This Act does not apply to records placed in the archives of an educational institution or the Archives of Ontario by or on behalf of a person or organization other than:

(a) an institution as defined in this Act or in the *Municipal Freedom of Information and Protection of Privacy Act*; or:

(b) a health information custodian as defined in the *Personal Health Information Protection Act, 2004*.

Deleted: R.S.O. 1990, c. F.31, s. 65 (1); 2004, c. 3, Sched. A, s. 81 (6).

(2) REPEALED: 2004, c. 3, Sched. A, s. 81 (7).

Idem

(3) This Act does not apply to notes prepared by or for a person presiding in a proceeding in a court of Ontario if those notes are prepared for that person's personal use in connection with the proceeding. R.S.O. 1990, c. F.31, s. 65 (3).

Same

(4) This Act does not apply to anything contained in a judge's performance evaluation under section 51.11 of the *Courts of Justice Act* or to any information collected in connection with the evaluation. 1994, c. 12, s. 49.

Same

(5) This Act does not apply to a record of the Ontario Judicial Council, whether in the possession of the Judicial Council or of the Attorney General, if any of the following conditions apply:

1. The Judicial Council or its subcommittee has ordered that the record or information in the record not be disclosed or made public.
2. The Judicial Council has otherwise determined that the record is confidential.
3. The record was prepared in connection with a meeting or hearing of the Judicial Council that was not open to the public. 1994, c. 12, s. 49.

Same

(5.1) This Act does not apply to a record of a committee investigating a complaint against a case management master under section 86.2 of the *Courts of Justice Act*, whether in the possession of the committee, the Chief Justice of the Superior Court of Justice, the Attorney General or any other person, if any of the following conditions apply:

1. The committee has ordered that the record or information in the record not be disclosed or made public.
2. The record was prepared in connection with the committee's investigation of the complaint and the complaint was not dealt with in a manner that was open to the public. 1996, c. 25, s. 6; 2002, c. 18, Sched. K, s. 11.

Same

(6) Subject to subsection (7), 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. 82.

Exception

(7) 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. 82.

Same

(8) This Act does not apply.

(a) to a record respecting or associated with research conducted or proposed by an employee of an educational institution or by a person associated with an educational institution; or

(b) to a record of teaching materials collected, prepared or maintained by an employee of an educational institution or by a person associated with an educational institution for use at the educational institution.

Exception

(9) Despite subsection (8), the head of the educational institution shall disclose the subject-matter and amount of funding being received with respect to the research referred to in that subsection.

Application of Act

(10) Despite subsection (8), this Act does apply to evaluative or opinion material compiled in respect of teaching materials or research only to the extent that is necessary for the purpose of subclause 49 (c.1) (i).