

Policy Name:	Access to Information and Protection of Privacy
Originating/Responsible Department:	University Secretary and Legal Counsel
Approval Authority:	ARC
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Related Policies:	Information Security Policy
Contact:	University Secretary

Purpose

- To ensure that Carleton complies with the Freedom of Information and Protection of Privacy Act (FIPPA) regarding access to general information and the protection of personal information held by the University about students, employees or persons whose contractual arrangements are administered by the University and where the University has custody or control of the information.
- To provide a framework policy for more specific FIPPA policies and procedures that will address specific aspects of both access and privacy activities at the University.

Responsibility

The following University officers are responsible for ensuring the implementation of this policy:

- President
- Vice-Presidents
- Deans and Associate Deans
- Chief Advancement Officer
- Chairs and Directors of Academic Departments, Schools and Centres
- Office of The University Secretary and Legal Counsel
- All members of Senior Management Committee and Academic Research Committee

Employees are responsible for maintaining the confidentiality of general and personal information according to the Carleton University Employee Handbook and they are required to ensure that personal information is maintained in a secure environment. Violations of this policy may result in disciplinary penalties being imposed.

Employees should consult, as needed, the University Secretary about the disclosure of confidential and personal information, including information to be released under Sections 21 or 41 and 42 (1) of the Freedom of Information and Protection of Privacy Act (Appendix A).

Scope

This policy applies to all employees of the University who have access to general and personal information.

Definitions

The terms below are those used in the **FIPPA**. The following definitions describe the types of information which must not be disclosed to persons other than those who are authorized to have access:

Personal Information means recorded information about an identifiable individual which includes, but is not limited to names, home addresses and telephone numbers, age, sex, marital or family status, identifying number, race, national or ethnic origin, colour, religious or political beliefs or associations, educational history, medical history, disabilities, blood type, employment history, financial history, criminal history, anyone else's opinions about an individual, an individual's personal views or opinions, and name, address and phone number of parent, guardian, spouse or next of kin.

Educational History includes course grades, grade point average, academic status, graduation status, other institutions attended, admission status, course schedule and course registration status.

Financial History includes information about beneficiaries, insurance, benefits and debts.

Employment History includes personal recommendations or evaluations, character references or personnel evaluations, letters of discipline and reprimand and reasons for termination

Medical History includes health care history relating to medical, psychiatric or psychological diagnosis, condition, treatment or evaluation.

Law Enforcement includes disciplinary investigations or proceedings that lead or could lead to a penalty or sanction being imposed and policing

Related Definitions

First Party means the applicant (i.e. individual or organization) requesting access to information.

Second Party	means the University.
Third Party	means the person or organization whom the information concerns other than the applicant.

Policy

A. Access to Information

1.1 The University supports the public's right of access to information and the individual's right of access to, and the right to request correction of, personal information about themselves.

1.2 The University will provide access to routine information informally upon request, or actively disseminate information, using existing procedures.

1.3 A person has the right to access any record in the custody or under the control of the University, including a record containing personal information about the applicant, according to [Section 47 of FIPPA](#).

1.4 The right of access does not extend to information [exempt](#) from disclosure under Sections 12 to 23 of the Freedom of Information and Protection of Privacy Act (Appendix B), but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record.

1.5 The right of access to a record may be subject to the payment of a fee required according to University policy or practice for informal access requests and for formal access requests under Section 57 of the Freedom of Information and Protection of Privacy Act (Appendix C).

1.6 University Employees shall have access to personal information as it is required for the conduction of their duties within the University.

B. Protection of Personal Privacy

2.1 Collection

The University will collect personal information about students, employees, graduates or others as provided for under Sections 38 and 39 of the Freedom of Information and Protection of Privacy Act (Appendix D), ensuring at all times that it uses an appropriate notice and method of collection.

2.2 Accuracy of Factual Information

The University will make every reasonable effort to ensure that the personal information it uses is accurate and complete. Upon request by an individual to whom information relates, the University will correct or annotate the information

with a correction when documentary evidence, satisfactory to the University, is provided to substantiate the correction.

2.3 Protection

The University will protect personal information by making reasonable security arrangements to prevent the risk of unauthorized collection, access, use, disclosure or disposal of personal information.

2.4 Retention and Disposal

The University will retain for at least one year an individual's personal information (including exams and submissions for evaluation) when it is used to make a decision that directly affects the individual. Thereafter the University will dispose of personal information only with a Records Retention Schedule and Disposal Authority approved and signed by the University Secretary.

2.5 Use

The University will use personal information only:

- for the purpose for which that information was obtained, compiled, or disclosed; or
- for a use consistent with that purpose; or
- with the written consent of the individual.

2.6 Disclosure

The University will not disclose personal information about students or employees to any third party, unless it is otherwise provided for under Sections 21 or 41 and 42 (1) of the Freedom of Information and Protection of Privacy Act (see Appendix A for those circumstances when personal information can be disclosed).

Procedures

3.1 Access to General Information

- The University will continue to provide public access to University records that are now released routinely in response to informal requests and do not contain confidential or personal information.
- For informal requests, access will be provided according to procedures used in the department or office that has custody of the information.
- For formal requests, access will be provided according to procedures coordinated by the University Secretary.

3.2 Employee Access to Third Party Personal Information

- Employee access to confidential personal information about students, employees or others paid through the University's administrative systems where the university has custody or control of the information will be allowed if the information is necessary for the performance of the duties of the employee.
- Access will be administered according to those specific policies and procedures which may be established from time to time by the University to apply to the personal information of specific groups of individuals, such as students, faculty, staff, graduates or others.

3.3 Access to Third Party Personal Information about Employees

- External access to the information about employee positions, functions and remuneration will be provided routinely pursuant to Section 17 and 21 (4)a of the Act (Appendix E).
- Human Resource policies and collective agreements will govern access to an individual's own employee file.
- Formal requests, under FIPPA for an individual's personal information will be handled by:
 - the Office of the Assistant Vice-President (Human Resources) regarding all others.

3.4 Access for Research, Statistical, Archival or Historical Purposes

- Access to personal information for research, statistical, archival or historical purposes will be allowed under conditions specified in Sections 21 (1)e, 65 (1), 65 (8.1) of the Freedom of Information and Protection of Privacy Act. These include the written agreement of the researcher to comply with all relevant sections in Reg. 460 (10) of the Freedom of Information and Protection of Privacy Act and with the University's policies and procedures relating to the protection of personal information. (See Appendix A and F)

Appendix A

Freedom of Information and Protection of Privacy Act

21(1-4) Personal Privacy

21. (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. F.31, s. 21 (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 Government of Ontario and its agencies 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. F. 31, s. 21 (2).

Presumed invasion of privacy

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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. F. 31, s. 21 (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 or a member of the staff of a minister;
- (b) discloses financial or other details of a contract for personal services between an individual and an institution;
- (c) discloses details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a head under circumstances where,
 - (i) the individual represents 1 per cent or more of all persons and organizations in Ontario receiving a similar benefit, and
 - (ii) the value of the benefit to the individual represents 1 per cent or more of the total value of similar benefits provided to other persons and organizations in Ontario. R.S.O. 1990, c. F. 31, s. 21 (4).
- (d) 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.

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. F. 31, s. 21 (5).

Use and Disclosure of Personal Information

41 (1-3) and 42 Use of Personal Information and Disclosure

Use of Personal Information

- 41 (1) 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.
 - (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.

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. 2005, c. 28, Sched. F, s. 5 (2).

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). 2005, c. 28, Sched. F, s. 5 (2).

Where Disclosure is permitted

- 42 (1). 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 spouse, a close relative 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 spouse, a close relative or the 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 spouse, a close relative or the 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; and
- (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.

Appendix B

(12-23) EXEMPTIONS

Cabinet records

12. (1) A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

- (a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;
- (b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;
- (c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;
- (d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
- (e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy; and
- (f) draft legislation or regulations. R.S.O. 1990, c. F.31, s. 12 (1).

Exception

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

- (a) the record is more than twenty years old; or
- (b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given. R.S.O. 1990, c. F.31, s. 12 (2).

Advice to government

13. (1) A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution. R.S.O. 1990, c. F.31, s. 13 (1).

Exception

(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, whether or not the valuator is an officer of the institution;
- (d) an environmental impact statement or similar record;
- (e) a report of a test carried out on a product for the purpose of government equipment testing or a consumer test report;
- (f) a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy;

- (g) a feasibility study or other technical study, including a cost estimate, relating to a government policy or project;
- (h) a report containing the results of field research undertaken before the formulation of a policy proposal;
- (i) 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, whether or not the plan or proposal is subject to approval, unless the plan or proposal is to be submitted to the Executive Council or its committees;
- (j) a report of an interdepartmental committee task force or similar body, or of a committee or task force within an institution, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to the Executive Council or its committees;
- (k) a report of a committee, council or other 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;
- (l) the reasons for a final decision, order or ruling of an officer 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, whether or not the enactment or scheme allows an appeal to be taken against the decision, order or ruling, whether or not the reasons,
 - (i) are contained in an internal memorandum of the institution or in a letter addressed by an officer or employee of the institution to a named person, or
 - (ii) were given by the officer who made the decision, order or ruling or were incorporated by reference into the decision, order or ruling. R.S.O. 1990, c. F.31, s. 13 (2).

Idem

(3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where the record is more than twenty years old or where the head has publicly cited the record as the basis for making a decision or formulating a policy. R.S.O. 1990, c. F.31, s. 13 (3).

Law enforcement

14.(1) A head may refuse to disclose a record where 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. F.31, s. 14 (1); 2002, c. 18, Sched. K, s. 1 (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 where the disclosure would constitute an offence under an Act of Parliament;
 - (c) that is a law enforcement record where 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. F.31, s. 14 (2); 2002, c. 18, Sched. K, s. 1 (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) apply. R.S.O. 1990, c. F.31, s. 14 (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 where that agency is authorized to enforce and regulate compliance with a particular statute of Ontario. R.S.O. 1990, c. F.31, s. 14 (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. F.31, s. 14 (5).

Remedies for Organized Crime and Other Unlawful Activities Act, 2001

14.1 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 *Remedies for Organized Crime and Other Unlawful Activities Act, 2001*, conduct a proceeding under that Act or enforce an order made under that Act. 2001, c. 28, s. 22 (1); 2002, c. 18, Sched. K, s. 2.

Prohibiting Profiting from Recounting Crimes Act, 2002

14.2 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. 15 (1), 19 (4); 2002, c. 18, Sched. K, s. 3.

Relations with other governments

15. A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;
- (b) reveal information received in confidence from another government or its agencies by an institution; or
- (c) reveal information received in confidence from an international organization of states or a body thereof by an institution,

and shall not disclose any such record without the prior approval of the Executive Council. R.S.O. 1990, c. F.31, s. 15; 2002, c. 18, Sched. K, s. 4.

Defence

16. A head may refuse to disclose a record where the disclosure could reasonably be expected to prejudice the defence of Canada or of any foreign state allied or associated with Canada or be injurious to the detection, prevention or suppression of espionage, sabotage or terrorism and shall not disclose any such record without the prior approval of the Executive Council. R.S.O. 1990, c. F.31, s. 16; 2002, c. 18, Sched. K, s. 5.

Third party information

17.(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, where 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. F.31, s. 17 (1); 2002, c. 18, Sched. K, s. 6.

Tax information

(2) A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax. R.S.O. 1990, c. F.31, s. 17 (2).

Consent to disclosure

(3) A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure. R.S.O. 1990, c. F.31, s. 17 (3).

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; 2005, c. 28, Sched. F, s. 2.

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. 2005, c. 28, Sched. F, s. 3.

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. 2005, c. 28, Sched. F, s. 3.

Application of Act

(3) The exemption in subsection (1) is in addition to any other exemptions in this Act. 2005, c. 28, Sched. F, s. 3.

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. 2005, c. 28, Sched. F, s. 4.

Danger to safety or health

20. A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual. R.S.O. 1990, c. F.31, s. 20; 2002, c. 18, Sched. K, s. 8.

Personal privacy

21. (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. F.31, s. 21 (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 Government of Ontario and its agencies 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. F.31, s. 21 (2).

Presumed invasion of privacy

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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. F.31, s. 21 (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 or a member of the staff of a minister;
- (b) discloses financial or other details of a contract for personal services between an individual and an institution;
- (c) discloses details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a head under circumstances where,
 - (i) the individual represents 1 per cent or more of all persons and organizations in Ontario receiving a similar benefit, and

(ii) the value of the benefit to the individual represents 1 per cent or more of the total value of similar benefits provided to other persons and organizations in Ontario; or

(d) 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. F.31, s. 21 (4); 2006, c. 19, Sched. N, s. 1 (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. F.31, s. 21 (5).

Fish and wildlife species at risk

21.1 (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to lead to the killing, capturing, injuring or harassment of fish or wildlife that belong to a species at risk or to interference with the habitat of fish or wildlife that belong to a species at risk. 1997, c. 41, s. 118 (1); 2002, c. 18, Sched. K, s. 9.

Definitions

(2) In this section,

“fish” and “wildlife” have the same meanings as in the *Fish and Wildlife Conservation Act, 1997*. 1997, c. 41, s. 118 (1).

Information soon to be published

22. A head may refuse to disclose a record where,

(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. F.31, s. 22.

Exemptions not to apply

23. An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. R.S.O. 1990, c. F.31, s. 23; 1997, c. 41, s. 118 (2).

Appendix C

(57) Fees

57. (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. 11 (1).

(2) Repealed: 1996, c. 1, Sched. K, s. 11 (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. F.31, s. 57 (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. F.31, s. 57 (4); 1996, c. 1, Sched. K, s. 11 (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. F.31, s. 57 (5); 1996, c. 1, Sched. K, s. 11 (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. 11 (4).

Appendix D

(38-39) Personal information and Collection of Personal Information

Personal information

38. (1) In this section and in section 39,

“personal information” includes information that is not recorded and that is otherwise defined as “personal information” under this Act. R.S.O. 1990, c. F.31, s. 38 (1).

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. F.31, s. 38 (2).

Manner of collection

39. (1) Personal information shall only be collected by an institution 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 42 or under section 32 of the *Municipal Freedom of Information and Protection of Privacy Act*;
- (c) the Commissioner has authorized the manner of collection under clause 59 (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 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. F.31, s. 39 (1).

Notice to individual

(2) Where personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, 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 a public official who can answer the individual’s questions about the collection. R.S.O. 1990, c. F.31, s. 39 (2).

Exception

(3) Subsection (2) does not apply where the head may refuse to disclose the personal information under subsection 14 (1) or (2) (law enforcement), section 14.1 (*Remedies for Organized Crime and Other Unlawful Activities Act, 2001*) or section 14.2 (*Prohibiting Profiting from Recounting Crimes Act, 2002*). 2002, c. 2, s. 19 (6).

Appendix E

17 and 21 (4) Third party information and Personal Privacy (Limitations)

Third party information

17. (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, where 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. F.31, s. 17 (1); 2002, c. 18, Sched. K, s. 6.

Tax information

(2) A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax. R.S.O. 1990, c. F.31, s. 17 (2).

Consent to disclosure

(3) A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure. R.S.O. 1990, c. F.31, s. 17 (3).

Personal Privacy (Limitations)

21 (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 or a member of the staff of a minister;
- (b) discloses financial or other details of a contract for personal services between an individual and an institution;
- (c) discloses details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a head under circumstances where,
 - (i) the individual represents 1 per cent or more of all persons and organizations in Ontario receiving a similar benefit, and
 - (ii) the value of the benefit to the individual represents 1 per cent or more of the total value of similar benefits provided to other persons and organizations in Ontario; or
- (d) 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. F.31, s. 21 (4); 2006, c. 19, Sched. N, s. 1 (2).

Appendix F

65(1) and 65 (8.1) Application of Act and Exception

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. 2005, c. 28, Sched. F, s. 8 (1)*.

Exception

(8.1) 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. 2005, c. 28, Sched. F, s. 8 (2).

Freedom of Information and Protection of Privacy Act, R.R.O. 1990, REGULATION 460, Amended to O. Reg. 256/06, GENERAL

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. 460, s. 10 (1).