

Student Record Regulation

This Information Bulletin is intended to provide school boards and charter schools information as to changes in the *Student Record Regulation*, effective September 15, 2006, as well as the impact of the *Freedom of Information and Protection of Privacy Act* (FOIP Act). All of the references to boards also apply to charter schools.

Parts of this Information Bulletin will be of use to private schools, however the *Personal Information Protection Act*, not the *FOIP Act* applies to private schools. The *Private Schools Regulation* outlines which sections of the *Student Record Regulation* apply to private schools.

The relevant sections of the *School Act* related to student records are contained in Appendix A and relevant sections of the *FOIP Act* in Appendix B.

For the most part, the *School Act* (Section 23) and the *Student Record Regulation* (hereafter the “*Regulation*”) govern a school board’s activity of collecting personal information on students to whom it provides an education program that meets the needs of the student. Section 2 of the *Regulation* constitutes the legislative authority needed under Section 33 of the *FOIP Act* to collect personal information. Section 2 of the *Regulation* provides a list of what is included in a student record, but it is not exhaustive. The student record “*must contain all information affecting the decisions made about the education of the student that is collected or maintained by a board, regardless of the manner in which it is maintained or stored...*”. Discretion resides with a board or charter school to make this determination.

Section 2(1)(b) - Student identifiers

Section 2(1)(b) ensures that the Alberta Education student identifier and any other student identifier assigned to the student by the board is on the record. Other identifiers may be the school’s local student identification number, or special education related codes assigned to a student for funding and monitoring purposes.

Section 2(1)(d) - Legal supporting documentation

Section 2(1)(d) expressly permits boards to collect or require from parents valid and current legal documentation to establish which parents have a right of access to the student record maintained by the board under Section 23 of the *School Act*. Parents should provide documentation in support of their status

as a “parent” as defined in Section 1(2) of the *School Act*. Alternatively, if a person has access to the student under a separation agreement or order of the court, they are to provide supporting documentation to the board. The onus is on the person claiming a right of access to provide the board with appropriate supporting documentation which is satisfactory to the board.

Maintaining this information in the student record will make it clear to school administrators who has access to the student record and who has a right to appeal to the board decisions respecting access to, or the accuracy or completeness of, the student record pursuant to Section 123(4) of the *School Act*. The Minister may then review the board’s decision under Section 124(3) of the *School Act*.

Section 2(1)(h) - Resident board

This provision enables a board to inquire of the parent whether they are a resident of the separate or public board. This indirectly permits a board to ask a student’s parents if they are of the faith of those who established the separate school district, whether they are of the Roman Catholic or Protestant faith.

Section 2(1)(m) - Results

This section enables persons who have a right of access to the student record to be apprised of a board/school (superintendent/principal) application under the *Student Evaluation Regulation* (AR177/2003) to the Learner Assessment Branch, Alberta Education for a special provision related to the writing of the diploma examination.

Section 2(1)(n) – Assessments

School boards are required to record information on a student record regarding “formal” tests used with students. Typically, these tests are those restricted level C tests described in *The Standards For Psycho-Educational Assessment* (Alberta Education 1994).

This section has been revised to require an interpretive report written by the examiner to be added to the student record in addition to any action taken as a result of an assessment, evaluation or interpretive report. Such action as a result of the formal testing may include the development of an Individualized Program Plan (IPP) or special education program placement.

Computer and software-based interpretation reports may be integrated within the body of an individually written report.

Section 2(1)(o) – Other assessments

This change clarifies the ability of a parent to require boards to place on a student record, independent assessments and interpretive reports, that the parent or student believe should be considered by boards when making education decisions about a student.

Section 2(1)(r) Suspensions and expulsions

This change requires that information relating to suspensions and expulsions of more than one day in Sections 24 and 25 of the *School Act* be recorded and retained on a student record. The information shall be maintained for a period of at least one year following the date of the suspension or expulsion, but no longer than 3 years. This gives boards discretion to determine in which circumstances and within the 1 to 3 years time, to remove suspension or expulsion information by revising existing policies and procedures around record retention periods.

This retention period coincides with the minimum one (1) year retention period set out in Section 35 of the *FOIP Act* which requires that personal information used to make decisions directly affecting individuals must be accurate, complete and be retained for at least one year after using it so that an individual can obtain access to it.

Section 2(1)(s) - Eligibility for Francophone education

This section requires all boards to make a notation regarding a parent's eligibility as set out in Section 23 of the *Canadian Charter of Rights and Freedoms* to have their children receive instruction in French. It also requires that a notation be made to indicate whether the parent wishes to exercise that right. These two notations must appear in the student record. This ties in with Section 7(5) which allows disclosure of this information to a Regional authority for a Francophone Education Region, upon a written request.

Section 2(1)(t) – Aboriginal Ancestry

This new clause allows for the student to voluntarily provide information on the student record of his/her aboriginal ancestry, indicating whether the student is Status Indian/ First Nations, Non-Status Indian/ First Nations, Métis or Inuit. This new clause is aligned with the Alberta Aboriginal Policy Initiative to enhance educational opportunities for all Alberta Aboriginal peoples.

Section 2(3) - Individualized program plan (IPP)

This section has been changed to require summaries of the previous school years' IPPs, rather than the entire previous IPP, to be placed on the student record.

In the case of a current IPP, the entire IPP, with amendments, is still required to be placed on the student record.

The reason current and summaries of previous IPPs are on the student record, is because program planning for students is aided by the availability of current and previous information to reconstruct and review the education program of a student with special needs.

Section 2(4) - Photocopies of birth certificates

In order to verify the student's name, the board may request a copy of the student's birth certificate or another document if the student was born outside of Canada. However, boards may develop policies whereby another document can serve as proof of the legal name if the cost of providing a copy of the student's birth certificate is prohibitive.

Section 2(5) Annual review of the student record

This section reminds boards to update information referred to in Section 2(1) annually.

Boards must remember that Section 35 of the *FOIP Act* requires that all personal information used to make decisions that directly affect an individual must be accurate and complete and be maintained for a minimum period of one year so the person has a reasonable opportunity to access it.

The *FOIP Act* only sets a minimum period. Section 23 of the *School Act* does provide a person examining the records with a right to request that the board rectify a matter should the person reviewing the record believe information is inaccurate or incomplete. In addition, a person has a right under Section 123 of the *School Act* to appeal to the board a decision of a board employee respecting access to or the accuracy or completeness of the student record.

Although the information referred to in Section 3(1) of the Regulation (information not to be placed on the student record) is used to make decisions about an individual, the board must comply with Section 35 of the *FOIP Act* as a minimum requirement. A board's local record management retention schedules and policies may dictate longer retention periods.

Section 3(1) - Information not to be included in student record

Information that must not be placed on a student record is now described in a separate section of the Regulation. This section expressly indicates what information is not to be placed on a student record. While the specific information is not to be placed on the student record, the board may still receive this type of information and therefore the board must still manage the information in accordance with the *FOIP Act*.

Although there is no right of access to this information as it is not part of the student record access to which is governed by Section 23 of the *School Act*, the *FOIP Act* will apply to determine how and if access will be provided.

Boards must remember that persons whom the personal information is about have a right to request access to it. However, although a right of access exists, exceptions may apply to the disclosure. The information in the record may be withheld (e.g., if disclosure is harmful to the safety or health of the applicant, harmful to a law enforcement matter).

This personal information is also subject to the privacy protection provisions of the *FOIP Act*. Boards must make reasonable security arrangements to protect against risks such as unauthorized access, collection, use, disclosure and disposal. Boards also must keep in mind that Section 35 of the *FOIP Act* sets out a minimum retention of one year if the information will be used to make a decision that directly affects the individual student whose personal information is contained in these records.

Section 3(1) and Section 2(2)

Although the information described in Section 3(1) must not be placed on the student record, Section 2(2) does provide an exception to this rule. This section provides discretion to boards to determine when sensitive personal information, including information from a personal counseling record that may be injurious to the student, may be placed on a student record. The board must be of the opinion that it is in the public interest, or alternatively that it must be placed on the record to ensure the safety of staff and other students. If information of this nature is to be placed on the student record, the board should make efforts to keep access to the sensitive information to a strict minimum. This must be done in order to balance the protection of the student's privacy while ensuring that the objective of protecting other persons' safety on a "need to know" basis is met.

Section 3(1)(a)(i) - Notes and observations not used in program placement

Professional judgment and discretion must be exercised in meeting the expectations of this section of the Regulation. A principal's or teacher's notes in many cases do not relate to a specific education program being provided to a student. Such notes may take the form of casual reminders, or observations of a student's behavior, which are not being used as part of a formal student assessment, or disciplinary proceeding. This information is not typically used in making education decisions about students, particularly regarding program placement, grade promotion and so on.

Nevertheless, notes and observations about a student are that student's personal information. These are records in the custody or under the control of the school board and are therefore subject to the *FOIP Act*. Management of this information (records) must be addressed by a board's record management policies. Boards also must remember that Section 35 of the *FOIP Act* sets out a minimum retention of one year if the information will be used to make a decision that directly affects the individual student whose personal information is contained in these records.

Section 3(1)(a)(ii) - Information related to a report or an investigation under the *Child, Youth and Family Enhancement Act*

These records contain personal information that is subject to the *FOIP Act*. Boards must ensure that access to this personal information is on a "need to know basis". School boards must ensure that the provisions of the *Child, Youth and Family Enhancement Act* are followed (e.g., duty to report a child in need of protective services under Section 4(1) of the *Child, Youth and Family Enhancement Act*). Records may be created or compiled by a board, teacher, or a school counselor. Management of this information (records) must be addressed by a board's record management policies. If a FOIP request is made for these records, some exceptions in the *FOIP Act* may apply to withhold the information from disclosure.

Section 3(1)(a)(iii) - Counseling records of a sensitive or embarrassing nature

Counselors are expected to focus their activities in three areas: academic, vocational and personal counseling. Counseling notes and records created with academic and vocational objectives in mind should be placed on a student record, as Section 2(1) of the Regulation requires a student record to contain all information affecting decisions made about the student's education. This would include information related to a student's vocational and career development including such information as interest and aptitude inventory results and records relating to a student's school timetable.

However, some records of school counselors may be excluded from the student record. It is intended that notes and records maintained during personal counseling sessions with students may, in most instances, be excluded from the student record.

Section 3(1)(b) - Information related to young offenders

This provision reminds boards of their duties to abide by the provisions of the new *Youth Justice Act, or the Youth Criminal Justice Act (Canada)* to ensure that federal young person's information not be placed on the student record.

Section 3(3) - Disclosure of information not contained in the student record

This provision reminds boards that the information referred to in Section 3 that is not to be placed in the student record, is only to be disclosed in accordance with the provisions of the *FOIP Act*. If a FOIP request is made for this information, exceptions in the *FOIP Act* may apply to withhold the information contained in the record from disclosure.

Section 38 of the *FOIP Act* requires that school boards take reasonable security measures against risks such as unauthorized access, collection, use, disclosure, or destruction.

Section 4(1) - Retention of student record

The *FOIP Act* sets a minimum retention period of one year for personal information used to make decisions, and the student record is personal information of that nature. However, the Regulation sets a seven year (7) retention period for the student record. This is similar to retention periods for financial records, and closely coincides with a student turning 25 years of age. In addition, a board's local record management retention schedules and policies may dictate longer retention periods, which are permitted under the Regulation in Section 4(3).

Section 4(1) and (2) outlines what happens to the student record when a student transfers to another school, both in and outside of Alberta.

Section 5(1) – Disposal and destruction of student record

Subsections 5(1) and 5(3) add a requirement that a board shall dispose of or destroy student records that are no longer required to be kept under Section 4 of the *Regulation*; and that a board shall dispose of information referred to in Section 3 in the same manner that records are disposed of under Section 5 (2). Subsection (2) sets out how the destruction of personal information must be conducted. Destruction must be effected in a complete and confidential manner.

Section 38 of the *FOIP Act* requires school boards to take reasonable security measures against risks such as unauthorized access, collection, use, disclosure, or destruction.

Section 6 - Access to student records

Section 23(2) of the *School Act* lists the persons who may review the student record. The board's obligation to inform a person of the right to access a student record must extend to persons who have access to the student under a separation agreement or an order of a court.

Part 2 of the *FOIP Act* governs the disclosure of personal information which is done by public bodies. As school boards are subject to this Act, they must

ensure that everyday or regular disclosures are done in compliance with Section 40 of the *FOIP Act*.

Section 7 - Disclosure of information

This section has been revised and reorganized to provide greater clarity between the provisions of this *Regulation* and applicable sections of the *FOIP Act*. Specific disclosures applicable to the sector have been included. In an instance where a board is faced with a disclosure, if the circumstance is not covered by this section of the *Regulation*, the provisions of the *FOIP Act* may be reviewed to determine if disclosure of the student record information is authorized.

Section 7(2) - Disclosure to an employee

This disclosure is the equivalent of Section 40(1)(e) and (f) of the *FOIP Act*, which permits a public body to disclose personal information for the purpose of complying with an enactment of Alberta (Section 23, 40, 41 and 43 of the *School Act*) or for any purpose in accordance with an enactment that authorizes or requires disclosure.

Section 7(2)(b) - Disclosure to an employee

This revised provision in conjunction with Section 7(1) adopts the *FOIP Act* definition of "employee: *in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body*".

It is similar to section 40(1)(h) of the *FOIP Act*, which permits the disclosure of personal information within the school board on a "need to know basis".

Section 7(2)(c) - Disclosure to the Minister

This provision is needed to ensure that boards have the ability to disclose personal information from the student record to the Minister. This is also construed as an authorized disclosure under Section 40(1)(e) and (f) of the *FOIP Act*.

The Minister may only use the information received by a board if it is necessary for the performance of the Minister's duties or persons carrying duties on the Minister's behalf.

Section 7(2)(d) – Disclosure with consent of parent or student

This disclosure is similar to Section 40(1)(d) of the *FOIP Act* which permits public bodies to disclose personal information if the individual the personal information is about has identified the information and consented, in the prescribed manner, to the disclosure. The contents of the prescribed consent are found in Section 6 of the *Freedom of Information and Protection of Privacy Regulation (FOIP Regulation)* which is attached as Appendix C. The consent required under the *FOIP Act* must be in writing, identify the personal

information being disclosed, to whom it may be disclosed and how it may be used.

While the consent requirement in the *Student Record Regulation* does not require consent as under the *FOIP Act*, the *FOIP Regulation* consent is a good model to follow.

However, given that the *FOIP Act* does not refer to the term “parent” as defined in the *School Act* but recognizes that consent may be given by the “guardian” as long as doing so does not unreasonably invade a minor’s privacy, it is felt that the term “parent” in the *Regulation* should be maintained. In most instances, permitting a parent to give consent for a disclosure of their child’s personal information that is contained in the student record, when the student is under 16 years of age will not unreasonably invade the student’s privacy therefore resembling the rationale in Section 84(1)(e) of the *FOIP Act*. If the student is 16 years of age or older, the board may obtain consent of the student or the parent. If a student is an independent student, as defined in the *School Act*, only the student can give consent.

Section 7(3) - Disclosure to Department of Justice and Attorney General (Young Offender Branch officials)

The change in this provision recognizes the newly named legislation, that permits boards to disclose to the Department of Justice and Attorney General and the Department of the Solicitor General and Public Security its designate (e.g. Youth Justice Committees), information needed for the administration of the *Youth Justice Act* (Alberta), or the *Youth Criminal Justice Act* (Canada) for carrying out programs or policies under either Acts. Both departments play a role in administering these statutes. Consent from the young person and court orders are not required to allow for the production of specific personal information about the young person (e.g., attendance and performance information needed from a student record for the preparation of a pre-disposition report, and any other information which may be required to review dispositions.

This disclosure of personal information is a permitted disclosure under Section 40(1)(f) of the *FOIP Act*. This is an enactment that requires disclosure of personal information. Alternatively, it may also be construed as a permitted disclosure of personal information under Section 40(1)(e) because it is a disclosure for the purpose of complying with an enactment.

Section 7(5) – Disclosure to a Regional authority for a Francophone Education Region

This new provision permits a board, upon the written request of a Regional authority to disclose to the superintendent or designate a student’s name, address, date of birth, sex and school, as well as the

parent’s contact information, for the purpose of contacting the parent to advocate for minority language education rights. This is to support the role of Regional authorities and consistent with Section 23 of the *Canadian Charter of Rights and Freedoms*.

Section 7(6) – Supervision of a Home Education Program

This new provision requires a board or an accredited private school which is supervising a home education program to advise the resident board that its resident students are attending school. This information includes a student’s name, address, date of birth, sex and school; in addition to the name, address and telephone number of the student’s parent.

Section 8 - Transfer of a student record inside and outside Alberta

When a student transfers schools within Alberta, Section 8(1) requires the transferring school, upon receiving a written request from the new school, to send the original, not a copy, of the student record to the new school where the student is now enrolled.

When a student transfers to a school outside Alberta and a written request for a student record is received from the school, the Alberta board is required to send a copy of the student record, not the original, to the new school.

This disclosure of personal information is a permitted disclosure under the *FOIP Act* Section 40(1)(f). The disclosure can be for any purpose as this is an enactment that requires disclosure of personal information. Alternatively, it may also be construed as a permitted disclosure of personal information under Section 40(1)(e) because it is a disclosure for the purpose of complying with an enactment.

Section 9- Designation of responsibility

This provision emphasizes the importance of keeping accurate and complete student information, the sensitivity of some student information and the provisions of this *Regulation* and the *FOIP Act* which require a high level of accountability.

Appendix A - Sections 23, 24, 123 and 124 - *School Act*

Appendix B - Part 2 - *FOIP Act*

Appendix C - Section 6 - *FOIP Regulation*

APPENDIX A
Sections 23, 24, 123 and 124
of the
School Act

Student records

- 23(1)** A board shall establish and maintain pursuant to the regulations a student record for each student enrolled in its schools.
- (2)** Subject to subsection (4), the following persons may review the student record maintained in respect of a student:
- (a) the student;
 - (b) the student's parent, except where the student is an independent student;
 - (c) a person who has access to the student under a separation agreement dated before this section comes into force or an access order under section 18 or 19 of the *Provincial Court Act* or under similar legislation, but not under a contact order under Part 2, Division 3, of the *Family Law Act*.

(NOTE: Section 124(3) of the Family Law Act purports to repeal and replace section 23(c) of the School Act. As section 23 is divided into subsections, there is no section 23(c). The clause (c) enacted by section 124(3) of the Family Law Act is included in this consolidation as section 23(2)(c).)

- (3)** A person who is entitled to review a student record under subsection (2) may request a copy of the student record from the board, and the secretary of the board shall provide, or on request shall send, the copy to the person on receiving payment for it at the rate prescribed by the board.
- (4)** Where a student record contains
- (a) a test, a test result or an evaluation of a student that is given by a person who has a recognized expertise or training in respect of that test or evaluation, or
 - (b) information relating to a test, test result or evaluation referred to in clause (a), the individuals referred to in subsection (2) are entitled to the things referred to in subsection (5).
- (5)** If subsection (4) applies, the individuals referred to in subsection (2) are entitled
- (a) to review the test, test result or evaluation referred to in subsection (4)(a) or information referred to in subsection (4)(b), and
 - (b) to receive from a person who is competent to explain and interpret it an explanation and interpretation of that test, test result, evaluation or information.
- (6)** If a person reviewing a student record referred to in subsection (4) so requests, the board shall ensure that a person who is competent to explain and interpret the test, test result, evaluation or information is available to explain and interpret that test, test result, evaluation or information.
- (7)** A person who contributes information to a student record is exempt from any liability with respect to the provision of that information if that person, in providing that information,

- (a) acted in good faith,
 - (b) acted within the scope of that person's duties and responsibilities, and
 - (c) did not act in a negligent manner.
- (8) If, on examining a student record, a person is of the opinion that the student record contains inaccurate or incomplete information, that person may request the board to rectify the matter.
- (9) The Minister may make regulations respecting student records.

RSA 2000 cS-3 s23;2003 cF-4.5 s124

Suspension

- 24(1)** A teacher or a principal may suspend a student in accordance with subsection (2) or (3) if in the opinion of the teacher or principal
- (a) the student has failed to comply with section 12, or
 - (b) the student's conduct is injurious to the physical or mental well-being of others in the school.
- (2) A teacher may suspend a student from one class period.
- (3) A principal may suspend a student
- (a) from school,
 - (b) from one or more class periods, courses or education programs, or
 - (c) from riding in a school bus.
- (4) A principal may reinstate a student suspended under subsection (2) or (3).
- (5) When a student is suspended under subsection (3), the principal shall
- (a) forthwith inform the student's parent of the suspension,
 - (b) report in writing to the student's parent all the circumstances respecting the suspension, and
 - (c) if requested, provide an opportunity to meet with the student's parent, and the student if the student is 16 years of age or older, to discuss the reasonableness of the suspension.
- (6) If the student is not to be reinstated within 5 school days after the date of the suspension, the principal shall
- (a) forthwith inform the board of the suspension, and
 - (b) report in writing to the board all the circumstances respecting the suspension and the principal's recommendations,
- and the student remains suspended until the board has made a decision under subsection (8).
- (7) The principal may recommend that the board expel the student if
- (a) the student has displayed an attitude of wilful, blatant and repeated refusal to comply with section 12, or
 - (b) the student's conduct is injurious to the physical or mental well-being of others in the school.

- (8) The board shall within 10 school days after the date of the suspension
- (a) reinstate the student, or
 - (b) expel the student from school in accordance with section 25.
- (9) Before the board makes a decision under subsection (8), the student and the student's parent may make representations to the board with respect to the principal's recommendation to expel the student.

1988 cS-3.1 s19;1990 c36 s8;1993 c24 s5;1994 c29 s9;
1997 c25 s3;1999 c28 s4

Appeal to board

123(1) The failure of a person to make a decision is deemed to be a decision that may be appealed under this Division.

- (2) Where a decision of an employee of a board significantly affects the education of a student,
- (a) the parent of the student, and
 - (b) in the case of a student who is 16 years of age or older, the student,

or either of them may within a reasonable time from the date that the parent or student was informed of the decision appeal that decision to the board.

- (3) For the purposes of this Act, a decision of an employee authorized by a board under section 61(1) to make the decision is deemed to be a decision of the board.
- (4) A person who may review a student record under section 23 may appeal to a board a decision of an employee of the board respecting access to or the accuracy or completeness of the student record within a reasonable time from the date that the parent or student was informed of the decision.
- (5) For the purposes of hearing appeals under this section, a board shall establish an appeal procedure by resolution.
- (6) A board may establish one or more committees for the purpose of carrying out the board's responsibilities under this section.
- (7) A board may make any decision that it considers appropriate in respect of the matter that is appealed to it under this section.
- (8) A board shall make a decision under this section forthwith after receiving an appeal and shall report that decision to the person making the appeal forthwith.

1988 cS-3.1 s103;1990 c36 s28

Review by the Minister

- 124(1)** If a board makes a decision on an appeal to it or otherwise with respect to
- (a) the placement of a student in a special education program,
 - (b) a matter referred to in section 10,
 - (c) a home education program,
 - (d) the expulsion of a student, or

- (e) the amount and payment of fees or costs,

the parent of a student affected by the decision or the student if the student is 16 years of age or older may request in writing that the Minister review the decision of the board.

- (2) Where a dispute arises

- (a) as to the amount of fees that are payable by a board to another board under Part 3, or
- (b) as to which board is responsible for a student,

a board or other person that is a party to the dispute may request in writing that the Minister review the matter.

- (3) A **person** who may review a student record under section 23 may request in writing that the Minister review a decision of the board, whether made on an appeal to it or otherwise, respecting access to or the accuracy or completeness of the student record.

1988 cS-3.1 s104;1990 c36 s29

APPENDIX B

Part 2 Protection of Privacy

Division 1 Collection of Personal Information

of the *Freedom of Information and Protection of Privacy Act*

Purpose of collection of information

- 33** No personal information may be collected by or for a public body unless
- (a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,
 - (b) that information is collected for the purposes of law enforcement, or
 - (c) that information relates directly to and is necessary for an operating program or activity of the public body.

1994 cF-18.5 s32;1999 c23 s19

Manner of collection of information

- 34(1)** A public body must collect personal information directly from the individual the information is about unless
- (a) another method of collection is authorized by
 - (i) that individual,
 - (ii) another Act or a regulation under another Act, or
 - (iii) the Commissioner under section 53(1)(h) of this Act,
 - (b) the information may be disclosed to the public body under Division 2 of this Part,
 - (c) the information is collected in a health or safety emergency where
 - (i) the individual is not able to provide the information directly, or
 - (ii) direct collection could reasonably be expected to endanger the mental or physical health or safety of the individual or another person,
 - (d) the information concerns an individual who is designated as a person to be contacted in an emergency or other specified circumstances,
 - (e) the information is collected for the purpose of determining suitability for an honour or award, including an honorary degree, scholarship, prize or bursary,
 - (f) the information is collected from published or other public sources for the purpose of fund-raising,
 - (g) the information is collected for the purpose of law enforcement,
 - (h) the information is collected for the purpose of collecting a fine or a debt owed to the Government of Alberta or a public body,

- (i) the information concerns the history, release or supervision of an individual under the control or supervision of a correctional authority,
 - (j) the information is collected for use in the provision of legal services to the Government of Alberta or a public body,
 - (k) the information is necessary
 - (i) to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Government of Alberta or a public body and is collected in the course of processing an application made by or on behalf of the individual the information is about, or
 - (ii) to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the Government of Alberta or a public body and is collected for that purpose,
 - (l) the information is collected for the purpose of informing the Public Trustee or the Public Guardian about clients or potential clients,
 - (m) the information is collected for the purpose of enforcing a maintenance order under the Maintenance Enforcement Act,
 - (n) the information is collected for the purpose of managing or administering personnel of the Government of Alberta or the public body, or
 - (o) the information is collected for the purpose of assisting in researching or validating the claims, disputes or grievances of aboriginal people.
- (2) A public body that collects personal information that is required by subsection (1) to be collected directly from the individual the information is about must inform the individual of
- (a) the purpose for which the information is collected,
 - (b) the specific legal authority for the collection, and
 - (c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.
- (3) Subsections (1) and (2) do not apply if, in the opinion of the head of the public body concerned, it could reasonably be expected that the information collected would be inaccurate.

1994 cF-18.5 s33;1996 c28 s21;1999 c23 s20

Accuracy and retention

- 35 If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body must
- (a) make every reasonable effort to ensure that the information is accurate and complete, and
 - (b) retain the personal information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it, or for any shorter period of time as agreed to in writing by
 - (i) the individual,
 - (ii) the public body, and
 - (iii) if the body that approves the records and retention and disposition schedule for the public body is different from the public body, that body.

1994 cF-18.5 s34;1999 c23 s21

Right to request correction of personal information

- 36(1)** An individual who believes there is an error or omission in the individual's personal information may request the head of the public body that has the information in its custody or under its control to correct the information.
- (2) Despite subsection (1), the head of a public body must not correct an opinion, including a professional or expert opinion.
- (3) If no correction is made in response to a request under subsection (1), or if because of subsection (2) no correction may be made, the head of the public body must annotate or link the personal information with that part of the requested correction that is relevant and material to the record in question.
- (4) On correcting, annotating or linking personal information under this section, the head of the public body must notify any other public body or any third party to whom that information has been disclosed during the one year before the correction was requested that a correction, annotation or linkage has been made.
- (5) Despite subsection (4), the head of a public body may dispense with notifying any other public body or third party that a correction, annotation or linkage has been made if
- (a) in the opinion of the head of the public body, the correction, annotation or linkage is not material, and
 - (b) the individual who requested the correction is advised and agrees in writing that notification is not necessary.
- (6) On being notified under subsection (4) of a correction, annotation or linkage of personal information, a public body must make the correction, annotation or linkage on any record of that information in its custody or under its control.
- (7) Within 30 days after the request under subsection (1) is received, the head of the public body must give written notice to the individual that
- (a) the correction has been made, or
 - (b) an annotation or linkage has been made pursuant to subsection (3).
- (8) Section 14 applies to the period set out in subsection (7).

RSA 2000 cF-25 s36;2003 c21 s9

Transferring request to correct personal information

- 37(1)** Within 15 days after a request to correct personal information under section 36(1) is received by a public body, the head of the public body may transfer the request to another public body if
- (a) the personal information was collected by the other public body, or
 - (b) the other public body created the record containing the personal information.
- (2) If a request is transferred under subsection (1),
- (a) the head of the public body who transferred the request must notify the individual who made the request of the transfer as soon as possible, and
 - (b) the head of the public body to which the request is transferred must make every reasonable effort to respond to the request not later than 30 days after receiving the request unless the time limit is extended pursuant to section 36(8).

RSA 2000 cF-25 s37;2003 c21 s10

Request under section 36 deemed to be a request under HIA

- 37.1(1)** If a request is made under section 36(1) to correct personal information that contains information to which the *Health Information Act* applies, the part of the request that relates to that information is deemed to be a request under section 13(1) of the *Health Information Act* and that Act applies as if the request had been made under section 13(1) of that Act.
- (2)** Subsection (1) does not apply if the public body that receives the request is not a custodian as defined in the *Health Information Act*.

RSA 2000 cH-5 s114

Protection of personal information

- 38** The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.

1994 cF-18.5 s36;1996 c28 s21

Division 2
Use and Disclosure of Personal Information by Public Bodies

Use of personal information

- 39(1)** A public body may use personal information only
- (a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,
 - (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use, or
 - (c) for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.
- (2)** Despite subsection (1), but subject to subsection (3), a post-secondary educational body may use personal information in its alumni records for the purpose of its own fund-raising activities.
- (3)** A post-secondary educational body must, when requested to do so by an individual, discontinue using that individual's personal information under subsection (2).
- (4)** A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.

1994 cF-18.5 s37;1999 c23 s24

Disclosure of personal information

- 40(1)** A public body may disclose personal information only
- (a) in accordance with Part 1,
 - (b) if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 17,
 - (c) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,
 - (d) if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure,

- (e) for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada,
- (f) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure,
- (g) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction in Alberta to compel the production of information or with a rule of court binding in Alberta that relates to the production of information,
- (h) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member,
- (i) to an officer or employee of a public body or to a member of the Executive Council, if the disclosure is necessary for the delivery of a common or integrated program or service and for the performance of the duties of the officer or employee or member to whom the information is disclosed,
- (j) for the purpose of enforcing a legal right that the Government of Alberta or a public body has against any person,
- (k) for the purpose of
 - (i) collecting a fine or debt owing by an individual to the Government of Alberta or to a public body, or to an assignee of either of them, or
 - (ii) making a payment owing by the Government of Alberta or by a public body to an individual,
- (l) for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit,
- (m) to the Auditor General or any other prescribed person or body for audit purposes,
- (n) to a member of the Legislative Assembly who has been requested by the individual the information is about to assist in resolving a problem,
- (o) to a representative of a bargaining agent who has been authorized in writing by the employee the information is about to make an inquiry,
- (p) to the Provincial Archives of Alberta or to the archives of a public body for permanent preservation,
- (q) to a public body or a law enforcement agency in Canada to assist in an investigation
 - (i) undertaken with a view to a law enforcement proceeding, or
 - (ii) from which a law enforcement proceeding is likely to result,
- (r) if the public body is a law enforcement agency and the information is disclosed
 - (i) to another law enforcement agency in Canada, or
 - (ii) to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority,
- (s) so that the spouse or adult interdependent partner, relative or friend of an injured, ill or deceased individual may be contacted,
- (t) in accordance with section 42 or 43,
- (u) to an expert for the purposes of section 18(2),

- (v) for use in a proceeding before a court or quasi-judicial body to which the Government of Alberta or a public body is a party,
 - (w) when disclosure is by the Minister of Justice and Attorney General or an agent or lawyer of the Minister of Justice and Attorney General to a place of lawful detention,
 - (x) for the purpose of managing or administering personnel of the Government of Alberta or the public body,
 - (y) to the Director of Maintenance Enforcement for the purpose of enforcing a maintenance order under the Maintenance Enforcement Act,
 - (z) to an officer of the Legislature, if the information is necessary for the performance of the duties of that officer,
 - (aa) for the purpose of supervising an individual under the control or supervision of a correctional authority,
 - (bb) when the information is available to the public,
 - (bb.1) if the personal information is information of a type routinely disclosed in a business or professional context and the disclosure
 - (i) is limited to an individual's name and business contact information, including business title, address, telephone number, facsimile number and e-mail address, and
 - (ii) does not reveal other personal information about the individual or personal information about another individual,
 - (cc) to the surviving spouse or adult interdependent partner or a relative of a deceased individual if, in the opinion of the head of the public body, the disclosure is not an unreasonable invasion of the deceased's personal privacy,
 - (dd) to a lawyer or student-at-law acting for an inmate under the control or supervision of a correctional authority,
 - (ee) if the head of the public body believes, on reasonable grounds, that the disclosure will avert or minimize an imminent danger to the health or safety of any person, or
 - (ff) to the Administrator of the Motor Vehicle Accident Claims Act or to an agent or lawyer of the Administrator for the purpose of dealing with claims under that Act.
- (2) Notwithstanding subsection (1), a post-secondary educational body may disclose personal information in its alumni records for the purpose of fund-raising activities of the post-secondary educational body if the post-secondary educational body and the person to whom the information is disclosed have entered into a written agreement
- (a) that allows individuals a right of access to personal information that is disclosed about them under this subsection, and
 - (b) that provides that the person to whom the information is disclosed must discontinue using the personal information of any individual who so requests.
- (3) Notwithstanding subsection (1), a post-secondary educational body may, for the purpose of assisting students in selecting courses, disclose teaching and course evaluations that were completed by students.
- (4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.

RSA 2000 cF-25 s40;2002 cA-4.5 s38;2003 c21 s11;
2006 c17 s6

Consistent purposes

- 41** For the purposes of sections 39(1)(a) and 40(1)(c), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure
- (a) has a reasonable and direct connection to that purpose, and
 - (b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.

1994 cF-18.5 s39;1999 c23 s26

Disclosure for research or statistical purposes

- 42** A public body may disclose personal information for a research purpose, including statistical research, only if
- (a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form or the research purpose has been approved by the Commissioner,
 - (b) any record linkage is not harmful to the individuals the information is about and the benefits to be derived from the record linkage are clearly in the public interest,
 - (c) the head of the public body has approved conditions relating to the following:
 - (i) security and confidentiality,
 - (ii) the removal or destruction of individual identifiers at the earliest reasonable time, and
 - (iii) the prohibition of any subsequent use or disclosure of the information in individually identifiable form without the express authorization of that public body,
- and
- (d) the person to whom the information is disclosed has signed an agreement to comply with the approved conditions, this Act and any of the public body's policies and procedures relating to the confidentiality of personal information.

1994 cF-18.5 s40

APPENDIX C
Section 6 of the
Freedom of Information and Protection of Privacy Regulation

Consent to disclosure

- 6(1)** In this section,
- (a) “electronic” includes created, recorded, transmitted or stored in digital form or in any other intangible form by electronic, magnetic or optical means or by any other means that have similar capabilities for creation, recording, transmission or storage;
 - (b) “electronic signature” means electronic information that a person creates or adopts in order to sign a record and that is in, attached to or associated with the record.
- (2)** The consent of an individual to a public body’s using or disclosing any of the individual’s personal information under section 39(1)(b) or 40(1)(d) of the Act
- (a) must meet the requirements of subsection (4), (5) or (6), and
 - (b) must specify to whom the personal information may be disclosed and how the personal information may be used.
- (3)** The consent or request of a third party under section 17(2)(a) of the Act must meet the requirements of subsection (4), (5) or (6).
- (4)** For the purposes of this section, a consent in writing is valid if it is signed by the person who is giving the consent.
- (5)** For the purposes of this section, a consent in electronic form is valid if
- (a) the head of the public body has established rules respecting the purposes for which consent in an electronic form is acceptable,
 - (b) the purpose for which the consent is given falls within one or more of the purposes set out in the rules mentioned in clause (a),
 - (c) the public body has explicitly communicated that it will accept consent in an electronic form,
 - (d) the consent in electronic form
 - (i) is accessible by the public body so as to be usable for subsequent reference,
 - (ii) is capable of being retained by the public body, and
 - (iii) meets the information technology standards, if any, established by the public body,
 - (e) the consent in electronic form includes the electronic signature of the person giving the consent,
 - (f) the electronic signature

- (i) is reliable for the purposes of identifying the person giving the consent, and
- (ii) meets the information technology standards and requirements as to the method of making the signature and as to the reliability of the signature, if any, established by the public body,

and

- (g) the association of the electronic signature with the consent is reliable for the purpose for which consent is given.

(6) For the purposes of this section, a consent that is given orally is valid if

- (a) the head of the public body has established rules respecting the purposes for which consent that is given orally is acceptable,
- (b) the purpose for which the consent is given falls within one or more of the purposes set out in the rules mentioned in clause (a),
- (c) the public body has explicitly communicated that it will accept consent that is given orally,
- (d) the record of the consent
 - (i) is accessible by the public body so as to be usable for subsequent reference, and
 - (ii) is capable of being retained by the public body,
- (e) the public body has authenticated the identity of the individual giving consent, and
- (f) the method of authentication is reliable for the purpose of verifying the identity of the individual and for associating the consent with the individual.

(7) For the purposes of subsection (6)(d), a record of the consent must be

- (a) an audio recording of the consent created by or on behalf of the public body,
- (b) in the form of documentation of the consent created by an independent third party, or
- (c) in the form of documentation of the consent created by the public body in accordance with the rules established by the head of the public body.

(8) Nothing in this section requires a person to give consent in an electronic form or orally.

AR 200/95 s6;170/98;216/99;251/2001;198/2003;27/2006