



## INTRODUCTION TO THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

The Freedom of Information and Protection of Privacy Act was enacted by the Alberta Legislature on June 1, 1994. The Act applies to the records of a broad range of 'public bodies' but was proclaimed on October 1, 1995 for provincial government departments only. Enforcement was extended to educational and health care institutions as well as local government bodies over a period of months beginning in the fall of 1998. Post-secondary educational institutions including the University of Calgary came under the legislation on September 1, 1999.

### **Right of Access**

The Act is intended first of all to allow any person the right of access to the records in the custody and under the control of a public body although this right is subject to limited and specific exceptions. Excluded, for example, are questions to be used on an examination or test, teaching materials or research information of employees of a post-secondary educational body, and material that has been deposited in the archives of a public body by or for a person or entity other than the public body. This last exclusion means that restrictions established by donors such as the Students' Union, TUCFA, or faculty members will be upheld by the University Archives.

There are also specific clauses which allow the head of a public body the discretionary right to refuse to disclose certain types of information. For example, the Act allows the head of the institution to refuse to disclose plans relating to the management of personnel or the administration of the institution if the plans have not yet been implemented.

The statute is framed in terms of access to 'records'. A record is defined in the Act as "information in any form [including] books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner." (s. 1(q)) The legislation, therefore, makes no distinction on the quality of records based on format. Even e-mail, which many consider to be an informal and therefore private form of communication, may contain information which will be considered accessible under the Act. The decision brought down in the fall of 1993 by the U.S. Court of Appeals, D.C. Circuit in the celebrated 'PROFS case' has alerted records managers in all jurisdictions to the legal issues involved in the growing use of electronic systems to create and store records. In this particular case, the court found that "messages transmitted on an electronic mail system used by the National Security Council and the Executive Office of the President were subject to the Federal Records Act and could not simply be destroyed as a matter

of principle.”<sup>1</sup> It concluded that if the information was of the type appropriate for preservation, agencies were obliged to put in place practices that would acknowledge the potential value of the records.

In response to the deliberations, the Society of American Archivists proclaimed: “Organizations - large and small, public and private - and individuals create records for a wide variety of purposes. Records document transactions and decisions, provided evidence of past actions, and keep track of rights and obligations. Organizations and individuals rely increasingly on electronic systems to communicate, transact business, formulate and develop policies, and disseminate regulations, policies, and directives. The records created, transmitted, and stored as a result of the use of these systems must be subject to the same statutes, regulations, standards, policies, and professional practices that pertain to records in all other formats.”<sup>2</sup> By defining a record as “information that is written, photographed, recorded or stored in any manner”, the Alberta legislation assigns this level of accountability to all administrators of public bodies as well.

### **Right to Privacy**

The Act also includes a strong ‘right to privacy’ component, allowing individuals to control the manner in which a public body collects personal information, to control the use that a public body may make of the information, and to control the disclosure of that information by a public body. It also allows individuals the right of access to personal information about themselves held by a public body and the right to request corrections to that information.

### **Information Management**

It should be clear that the FOIP Act merely reinforces an existing accountability to the public. Furthermore, by creating certain mechanisms intended to ensure compliance, the legislation demands a level of information management that has become crucial given the University’s reliance on electronic information systems.

Jo-Ann Munn Gafuik  
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Updated 2007

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<sup>1</sup> *News Media and the Law*, Vol. 17 (Fall 1993), p. 6.

<sup>2</sup> Duranti, Luciana (1995, March 23). SAA Press Release. The Society of American Archivists, *Position Statement on Archival Issues Raised by Information Stored in Electronic Form* [online]. Available via e-mail: ARCAN-L@ALTAVM.BITNET.