

2017

## CHAPTER 17

### An Act to amend *The Local Authority Freedom of Information and Protection of Privacy Act*

(Assented to May 17, 2017)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

#### Short title

1 This Act may be cited as *The Local Authority Freedom of Information and Protection of Privacy Amendment Act, 2017*.

#### S.S. 1990-91, c.L-27.1 amended

2 *The Local Authority Freedom of Information and Protection of Privacy Act* is amended in the manner set forth in this Act.

#### Section 2 amended

3 **Section 2 is amended:**

(a) **by adding the following clause after clause (b):**

“(b.1) ‘**employee**’ means an individual employed by a local authority and includes an individual retained under a contract to perform services for the local authority”;

(b) **in clause (e):**

(i) **by striking out “or” after subclause (i); and**

(ii) **by adding the following after subclause (i):**

“(i.1) in the case of a police service, the chief as defined in *The Police Act, 1990*; or”;

(c) **by adding the following clause after clause (e):**

“(e.1) ‘**information management service provider**’ means a person who or body that:

(i) processes, stores, archives or destroys records of a local authority containing personal information; or

(ii) provides information management or information technology services to a local authority with respect to records of the local authority containing personal information”; **and**

(d) **by adding the following subclause after subclause (f)(viii):**

“(viii.1) a police service or regional police service as defined in *The Police Act, 1990*”.

**New section 5.1**

**4 The following section is added after section 5:**

**“Duty of local authority to assist**

**5.1(1)** Subject to this Act and the regulations, a local authority shall respond to a written request for access openly, accurately and completely.

(2) On the request of an applicant, the local authority shall:

(a) provide an explanation of any term, code or abbreviation used in the information; or

(b) if the local authority is unable to provide an explanation in accordance with clause (a), endeavour to refer the applicant to a person who is able to provide an explanation”.

**Section 7 amended**

**5(1) Subsection 7(2) is amended:**

(a) by striking out “or” after clause (e);

(b) by adding “or” after clause (f); and

(c) by adding the following clause after clause (f):

“(g) stating that the request has been disregarded pursuant to section 43.1 and setting out the reason for which the request was disregarded”.

**(2) Subsection 7(4) is repealed and the following substituted:**

“(4) If an application is made with respect to a record that is exempt from access pursuant to section 14, 20 or 21 or subsection 28(1), the head may refuse to confirm or deny that the record exists or ever did exist”.

**New section 7.1**

**6 The following section is added after section 7:**

**“Applications deemed abandoned**

**7.1(1)** If the head has invited the applicant to supply additional details pursuant to subsection 6(3) or has given the applicant notice pursuant to clause 7(2)(a) and the applicant does not respond within 30 days after receiving the invitation or notice, the application is deemed to be abandoned.

(2) The head shall provide the applicant with a notice advising that the application is deemed to be abandoned.

(3) A notice provided pursuant to subsection (2) is to state that the applicant may request a review by the commissioner within one year after the notice is given”.

**New section 10**

**7 Section 10 is repealed and the following substituted:**

**“Manner of access**

**10(1)** If an applicant is entitled to access pursuant to subsection 9(1), a head shall provide the applicant with access to the record in accordance with this section.

- (2) Subject to subsection (3), if a record is in electronic form, a head shall give access to the record in electronic form if:
- (a) it can be produced using the normal computer hardware and software and technical expertise of the local authority;
  - (b) producing it would not interfere unreasonably with the operations of the local authority; and
  - (c) it is reasonably practicable to do so.
- (3) If a record is a microfilm, film, sound or video recording or machine-readable record, a head may give access to the record:
- (a) by permitting the applicant to examine a transcript of the record;
  - (b) by providing the applicant with a copy of the transcript of the record; or
  - (c) in the case of a record produced for visual or aural reception, by permitting the applicant to view or hear the record or by providing the applicant with a copy of it.
- (4) A head may give access to a record:
- (a) by providing the applicant with a copy of the record; or
  - (b) if it is not reasonable to reproduce the record, by giving the applicant an opportunity to examine the record”.

**Section 14 amended****8 The following clauses are added after clause 14(1)(k):**

- “(k.1) endanger the life or physical safety of a law enforcement officer or any other person;
- “(k.2) reveal any information relating to or used in the exercise of prosecutorial discretion;
- “(k.3) reveal a record that has been seized by a law enforcement officer in accordance with an Act or Act of Parliament”.

**Section 21 amended****9 Clause 21(a) is repealed and the following substituted:**

- “(a) contains any information that is subject to any privilege that is available at law, including solicitor-client privilege”.

**New sections 23.1 and 23.2****10 The following sections are added after section 23:****“Duty of local authority to protect**

**23.1** Subject to the regulations, a local authority shall establish policies and procedures to maintain administrative, technical and physical safeguards that:

- (a) protect the integrity, accuracy and confidentiality of the personal information in its possession or under its control;

- (b) protect against any reasonably anticipated:
  - (i) threat or hazard to the security or integrity of the personal information in its possession or under its control;
  - (ii) loss of the personal information in its possession or under its control; or
  - (iii) unauthorized access to or use, disclosure or modification of the personal information in its possession or under its control; and
- (c) otherwise ensure compliance with this Act by its employees.

**“Information management service provider**

**23.2(1)** A local authority may provide personal information to an information management service provider for the purpose of:

- (a) having the information management service provider process, store, archive or destroy the personal information for the local authority;
- (b) enabling the information management service provider to provide the local authority with information management or information technology services;
- (c) having the information management service provider take possession or control of the personal information;
- (d) combining records containing personal information; or
- (e) providing consulting services.

(2) Before disclosing personal information to an information management service provider, the local authority shall enter into a written agreement with the information management service provider that:

- (a) governs the access to and use, disclosure, storage, archiving, modification and destruction of the personal information;
- (b) provides for the protection of the personal information; and
- (c) meets the requirements of this Act and the regulations.

(3) An information management service provider shall not obtain access to, use, disclose, process, store, archive, modify or destroy personal information received from a local authority except for the purposes set out in subsection (1).

(4) An information management service provider shall comply with the terms and conditions of the agreement entered into pursuant to subsection (2).”

**Section 28 amended**

**11 Clause 28(2)(p) is repealed and the following substituted:**

“(p) if the information is publicly available, including information that is prescribed as publicly available”.

New section 28.1

**12 The following section is added after section 28:**

**“Notification**

**28.1** A local authority shall take all reasonable steps to notify an individual of an unauthorized use or disclosure of that individual’s personal information by the local authority if it is reasonable in the circumstances to believe that the incident creates a real risk of significant harm to the individual”.

Section 31 amended

**13(1) Subsection 31(1) is amended:**

- (a) by striking out “or” after clause (a);**
- (b) by adding “or” after clause (b); and**
- (c) by adding the following clause after clause (b):**

“(c) if the request has been disregarded, to be advised of the reason for which it has been disregarded”.

**(2) Subsection 31(2) is amended:**

- (a) by striking out “or” after clause (a);**
- (b) by adding “or” after clause (b); and**
- (c) by adding the following clause after clause (b):**

“(c) the request has been disregarded, setting out the reason for which the request was disregarded pursuant to section 43.1”.

Section 38 amended

**14(1) Subsection 38(1) is amended:**

- (a) by adding the following clauses after clause (a):**

“(a.1) an applicant is not satisfied that a reasonable fee was estimated pursuant to subsection 9(2);

“(a.2) an applicant believes that all or part of the fee estimated should be waived pursuant to subsection 9(5);

“(a.3) an applicant believes that an application was transferred to another local authority pursuant to subsection 11(1) and that local authority did not have a greater interest;

“(a.4) an individual believes that his or her personal information has not been collected, used or disclosed in accordance with this Act or the regulations”; **and**

- (b) in the portion following clause (c) by adding “or an individual” after “applicant”.**

**(2) Subsection 38(2) is amended by adding “or an individual” after “applicant”.**

**Section 39 amended****15 The following clauses are added after clause 39(2)(a):**

“(a.1) does not affect the applicant or individual personally;

“(a.2) has not moved forward as the applicant or individual has failed to respond to the requests of the commissioner;

“(a.3) concerns a local authority that has an internal review process that has not been used;

“(a.4) concerns a professional who is governed by a professional body that regulates its members pursuant to an Act, and a complaints procedure available through the professional body has not been used;

“(a.5) may be considered pursuant to another Act that provides a review or other mechanism to challenge a local authority’s decision with respect to the collection, amendment, use or disclosure of personal information and that review or mechanism has not been used;

“(a.6) does not contain sufficient evidence;

“(a.7) has already been the subject of a report pursuant to section 44 by the commissioner”.

**New section 40****16 Section 40 is repealed and the following substituted:****“Notice of intention to investigate or review**

**40** The commissioner shall, immediately on commencing an investigation or review, inform the head of:

(a) the commissioner’s intention to conduct an investigation or review; and

(b) the substance of the investigation or application for review”.

**Section 41 amended****17 Subsection 41(1) is amended in the portion preceding clause (a) by striking out “by an applicant” after “section 38”.****New section 43.1****18 The following section is added after section 43:****“Power to authorize a local authority to disregard applications or requests**

**43.1(1)** The head may apply to the commissioner to disregard one or more applications pursuant to section 6 or requests pursuant to section 31.

(2) In determining whether to grant an application or request mentioned in subsection (1), the commissioner shall consider whether the application or request:

(a) would unreasonably interfere with the operations of the local authority because of the repetitious or systematic nature of the application or request;

(b) would amount to an abuse of the right of access or right of correction because of the repetitious or systematic nature of the application or request; or

(c) is frivolous or vexatious, not in good faith or concerns a trivial matter.

(3) The application pursuant to subsection 6(1) or the request pursuant to clause 31(1)(a) is suspended until the commissioner notifies the head of the commissioner's decision with respect to an application or request mentioned in subsection (1).

(4) If the commissioner grants an application or request mentioned in subsection (1), the application pursuant to subsection 6(1) or the request pursuant to clause 31(1)(a) is deemed to not have been made.

(5) If the commissioner refuses an application or request mentioned in subsection (1), the 30-day period mentioned in subsection 7(2) or 31(2) resumes”.

**New section 44**

**19 Section 44 is repealed and the following substituted:**

**“Report of commissioner**

44(1) On completing a review or investigation, the commissioner may prepare a written report setting out the commissioner's recommendations with respect to the matter and the reasons for those recommendations.

(2) If a report is prepared pursuant to subsection (1), the commissioner shall forward a copy of the report to the head and, if the matter was referred to the commissioner by:

(a) an applicant or individual, to the applicant or individual and to any third party notified by the head pursuant to section 41; and

(b) a third party, to the third party and to the applicant.

(3) In the report mentioned in subsection (1), the commissioner may make any recommendations with respect to the matter under review or investigation that the commissioner considers appropriate”.

**Section 45 amended**

**20 Clause 45(b) is amended by striking out “clause 44(1)(b)” and substituting “subsection 44(2)”.**

**Section 46 amended**

**21(1) Subsection 46(1) is repealed and the following substituted:**

“(1) Within 30 days after receiving a decision of the head pursuant to section 45, an applicant or individual or a third party may appeal that decision to the court”.

**(2) Subsection 46(4) is amended by adding “or individual” after “an applicant”.**

**Section 47 amended**

**22 The following subsections are added after subsection 47(6):**

“(7) If, with respect to an appeal of a decision of the head regarding the matters mentioned in clauses 38(1)(a.1) to (a.4), the court determines that the decision of the head was not authorized pursuant to this Act, the court may:

(a) order the head to reconsider the decision and proceed in accordance with this Act, subject to any conditions that the court considers appropriate; or

(b) make any other order that the court considers appropriate.

“(8) If, with respect to an appeal mentioned in subsection (7), the court finds that the head had authority pursuant to this Act to make the decision that is the subject of the appeal, the court shall not order the head to reconsider the decision”.

**Section 50 amended**

**23 Subsection 50(1) is amended by adding “or employees” after “officers”.**

**Section 53 repealed**

**24 Section 53 is repealed.**

**New sections 53.1 and 53.2**

**25 The following sections are added before section 54:**

**“Access to manuals**

**53.1(1)** Every local authority shall make reasonable efforts to:

(a) make available on its website all manuals, policies, guidelines or procedures that are used in decision-making processes that affect the public by employees of the local authority in administering or carrying out programs or activities of the local authority; or

(b) provide those documents when requested in electronic or paper form.

(2) Any information in a record that a head would be authorized to refuse to give access to pursuant to this Act or the regulations may be excluded from manuals, policies, guidelines or procedures that are made available or provided pursuant to subsection (1).

**“Records available without an application**

**53.2(1)** Subject to subsection (2), the head may establish categories of records that are in the possession or under the control of the local authority and that are available to the public within a reasonable time without an application for access pursuant to this Act.

(2) The head shall not establish a category of records that contain personal information or third party information unless that information may be disclosed pursuant to this Act or the regulations”.



**Section 56 amended**

**26(1) Subsection 56(1) is amended by striking out “\$1,000, to imprisonment for not more than three months or to both fine and imprisonment” and substituting “\$50,000, to imprisonment for not more than one year or to both”.**

**(2) Subsection 56(2) is amended by striking out “subsection (1)” and substituting “this section”.**

**(3) Subsection 56(3) is amended:**

**(a) by striking out “or” after clause (b);**

**(b) by adding “or” after clause (c);**

**(c) by adding the following clause after clause (c):**

“(d) wilfully destroys any record that is governed by this Act with the intent to evade a request for access to the record”; **and**

**(d) in the portion following clause (d) by striking out “\$1,000, to imprisonment for not more than three months or to both fine and imprisonment” and substituting “\$50,000, to imprisonment for not more than one year or to both”.**

**(4) The following subsections are added after subsection 56(3):**

“(4) No employee of a local authority or of an information management service provider shall knowingly disclose or direct another person to disclose personal information in circumstances that would constitute an offence by the local authority or an information management service provider pursuant to this Act.

“(5) Every employee of a local authority or of an information management service provider who contravenes subsection (4) is guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000, to imprisonment for not more than one year or to both, whether or not the local authority or information management service provider has been prosecuted or convicted.

“(6) No employee of a local authority shall wilfully access or use or direct another person to access or use personal information that is not reasonably required by that individual to carry out a purpose authorized pursuant to this Act.

“(7) Every employee of a local authority who contravenes subsection (6) is guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000, to imprisonment for not more than one year or to both, whether or not the local authority has been prosecuted or convicted.

“(8) No employee of an information management service provider shall wilfully access or use or direct another person to access or use personal information for a purpose that is not authorized by subsection 23.2(1).

“(9) Every employee of an information management service provider who contravenes subsection (8) is guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000, to imprisonment for not more than one year or to both, whether or not the information management service provider has been prosecuted or convicted.

“(10) No prosecution shall be commenced pursuant to this section after the expiration of two years from the date of the discovery of the alleged offence”.

**Coming into force**

**27** This Act comes into force on proclamation.



