

EXPLANATORY NOTES

B I L L

No. 30

An Act to amend *The Freedom on Information and Protection of Privacy Act*

Clause of Bill

- 1 *The Freedom of Information and Protection of Privacy Amendment Act, 2016*
- 2 *The Freedom of Information and Protection of Privacy Act*
- 3 **Existing Provision**

Interpretation

2(2) “Government institution” does not include:

- (a) a corporation the share capital of which is owned in whole or in part by a person other than the Government of Saskatchewan or an agency of it;
- (b) the Legislative Assembly Service or offices of members of the Assembly or members of the Executive Council; or
- (c) the Court of Appeal, Her Majesty’s Court of Queen’s Bench for Saskatchewan or the Provincial Court of Saskatchewan.

1990-91, c.F-22.01, s.2; 1992, c.62, s.25; 1994, c.27, s.25; 2005, c.L-11.2, s.97; 2015, c.16, s.4.

Explanation

New clause (b.1) sets out a definition of ‘employee’ that includes a contractor.

A definition for ‘information management service provider’ (IMSP) is added.

New clause 2(2)(b) adds the reference to the new subsections 3(3) and (4).

- 4 **Existing Provision**

None

Explanation

Subsections 3(3) and (4) provide that the listed privacy related provisions of the Act will now apply to Cabinet Minister's offices and MLA's offices.

5 **Existing Provision**

None

Explanation

Subsection 5.1(1) provides for a duty to assist applicants for information.

Subsection (2) directs the government institution to explain abbreviations or to endeavour to refer an applicant to other government institutions where appropriate for that explanation.

6 **Existing Provision**

Response required

7(2) The head shall give written notice to the applicant within 30 days after the application is made:

- (a) stating that access to the record or part of it will be given on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;
 - (b) if the record requested is published, referring the applicant to the publication;
 - (c) if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;
 - (d) stating that access is refused, setting out the reason for the refusal and identifying the specific provision of this Act on which the refusal is based;
 - (e) stating that access is refused for the reason that the record does not exist;
- or
- (f) stating that confirmation or denial of the existence of the record is refused pursuant to subsection (4).

(4) Where an application is made with respect to a record that is exempt from access pursuant to this Act, the head may refuse to confirm or deny that the record exists or ever did exist.

Explanation

Subsection 7(2) is amended to add a new clause (g) to include a reference to the ability to disregard an application request under the new section 45.1.

Subsection 7(4) is amended to limit the application of this provision to the listed provisions.

7 Existing Provision

None

Explanation

New section 7.1 implements a process to treat an application as abandoned where there is no response to a notice provided within 30 days.

The head shall send the applicant a notice of abandonment.

Subsection (3) allows an applicant that has been the subject of an abandonment notice to seek a review by the OIPC within one year.

8 Existing Provision

Manner of access

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

(2) A head may give access to a record:

- (a) by providing the applicant with a copy of the record; or
- (b) where it is not reasonable to reproduce the record, by giving the applicant an opportunity to examine the record.

(3) A head may give access to a record that is a microfilm, film, sound recording, machine-readable record or other record of information stored by electronic means:

- (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.

Explanation

Subsection (1); no change in substance.

New subsection (2) provides for specific direction to provide an applicant with an electronic version of a document where it is readily available and reasonably practicable to do so.

Subsection (3) continues specific rules of access for films and sound records.

Subsection (4) continues existing subsection (2).

9 Existing Provision**Law enforcement and investigations**

15(1) A head may refuse to give access to a record, the release of which could:
(k) interfere with a law enforcement matter or disclose information respecting a law enforcement matter;

1990-91, c.F-22.01, s.15; 2003, c.29, s.30.

Explanation

New clause 15(1)(k.1) provides for an exemption where information would endanger the life or physical safety of the law enforcement officer or any other person.

New clause (k.2) provides for an exemption regarding information related to or used in the exercise of prosecutorial discretion.

New clause (k.3) provides for an exemption where disclosure would reveal a record that has been seized by a law enforcement officer in accordance with an Act.

10 Existing Provision**Solicitor-client privilege**

22 A head may refuse to give access to a record that:

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

1990-91, c.F-22.01, s.22.

Explanation

Clause 22(a) is amended to provide an exemption for any type of legal privilege rather than just solicitor-client privilege.

11 **Existing Provision**

Confidentiality provisions in other enactments

23(3) Subsection (1) does not apply to:

- (a) *The Adoption Act, 1998*;
 - (b) section 31 of *The Archives and Public Records Management Act*;
 - (c) section 74 of *The Child and Family Services Act*;
 - (d) section 7 of *The Criminal Injuries Compensation Act*;
 - (e) section 12 of *The Enforcement of Maintenance Orders Act*;
 - (e.1) *The Health Information Protection Act*;
 - (f) section 38 of *The Mental Health Services Act*;
 - (f.1) section 91.1 of *The Police Act, 1990*;
 - (g) section 13 of *The Proceedings against the Crown Act*;
 - (h) sections 15 and 84 of *The Securities Act, 1988*;
 - (h.1) section 61 of *The Trust and Loan Corporations Act, 1997*;
 - (i) section 40.1 or 283 of *The Traffic Safety Act*;
 - (i.1) subsection 97(4) of *The Traffic Safety Act*;
 - (j) Part VIII of *The Vital Statistics Act, 2009*;
 - (j.1) section 12 of *The Vital Statistics Administration Transfer Act*;
 - (k) sections 172 to 174 of *The Workers' Compensation Act, 2013*;
 - (l) any prescribed Act or prescribed provisions of an Act; or
 - (m) any prescribed regulation or prescribed provisions of a regulation;
- and the provisions mentioned in clauses (a) to (m) shall prevail.
- 1990-91, c.F-22.01, s.23; 1997, c.T-22.2, s.90;
 1999, c.H-0.021, s.66; 2004, c.A-26.1, s.36;
 2004, c.T-18.1, s.300; 2004, c.5, s.3; 2005, c.25,
 s.37; 2008, c.V-7.3, s.16; 2009, c.32, s.4; 2013,
 c.W- 17.11, s.192; 2014, c.29, s.31; 2015,
 c.A-26.11, s.42; 2015, c.33, s.21.

Explanation

Section (3) is amended to update the cross-references and to remove repealed provisions.

12 **Existing Provision**

None

Explanation

New section 24.1 sets out a positive duty to protect personal information.

New subsection 24.2(1) authorises the provision of personal information to an IMSP for the specific reasons set out in clauses (a) through (e).

Subsection (2) creates a requirement for the government institution to enter in an agreement to ensure that the personal information is properly managed and protected.

Subsection (3) prohibits alternate uses of the personal information by the IMSP.

Subsection (4) provides that an IMSP must comply with the terms of the agreement entered into pursuant to subsection (2).

13 Existing Provision

Disclosure of personal information

29(2) Subject to any other Act or regulation, personal information in the possession or under the control of a government institution may be disclosed:

(p) where the information is publicly available;

1990-91, c.F-22.01, s.29; 2003, c.29, s.31; 2015, c.A-26.11, s.42.

Explanation

Clause (p) is amended to include an ability to designate certain information as “publicly available” information that can be disclosed under this section.

14 Existing Provision

None

Explanation

New section 29.1 creates a responsibility for a government institution to notify an individual of an unauthorized use or disclosure of person information where there is a real risk of significant harm to the individual.

15 Existing Provision

Right of correction

32(1) An individual who is given access to a record that contains personal information with respect to himself or herself is entitled:

(a) to request correction of the personal information contained in the record if the person believes that there is an error or omission in it; or

(b) to require that a notation be made that a correction was requested but not made.

(2) Within 30 days after a request pursuant to clause (1)(a) is received, the head shall advise the individual in writing that:

(a) the correction has been made; or

(b) a notation pursuant to clause (1)(b) has been made.

(3) Section 12 applies, with any necessary modification, to the extension of the period set out in subsection (2).

1990-91, c.F-22.01, s.32.

Explanation

Clause 32(1)(c) is added to include a reference to a disregarded application to correct information held by a government institution.

A new clause 2(c) is added to include an explanation as to why an application is disregarded under new section 45.1

16 Existing Provision

General powers of commissioner

45 The commissioner may:

- (a) engage in or commission research into matters affecting the carrying out of the purposes of this Act;
- (b) conduct public education programs and provide information concerning this Act and the commissioner's role and activities;
- (c) receive representations concerning the operation of this Act.

1990-91, c.F-22.01, s.45.

Explanation

New subsection (1) defines “extra-provincial, territorial or federal commissioner” to mean other Canadian information and privacy commissioner offices.

New clause (2)(d) is added to authorize the IPC to determine its own procedures.

New clause (2)(e) authorizes the exchange of personal information for investigations or reviews involving a government institution and at least one other jurisdiction.

New subsection 45.1(1) authorizes the head of a government institution to apply to the OIPC to disregard an application for access (section 7) or an application for correction (section 32).

Subsection (2) establishes the criteria to be considered by the OIPC in considering a request to disregard.

Subsection (3) provides that the time limits for the application in question are suspended pending the decision by the OIPC.

Where the OIPC grants the head's request to disregard an application, the application is deemed to not have occurred.

Subsection (5) provides for the recommencement of the notice period if the request to disregard an application is denied.

17 Existing Provision

Confidentiality

46(1) The commissioner shall not disclose any information that comes to the knowledge of the commissioner in the exercise of the powers, performance of the duties or carrying out of the functions of the commissioner pursuant to this Act.
(2) Subsection (1) applies, with any necessary modification, to the staff of the commissioner.

1990-91, c.F-22.01, s.46.

Explanation

Subsection (1) is amended to include reference to the new clause 45(2)(e).

Subsection (2) is amended to extend the confidentiality requirements of the OIPC to their contractors.

18 Existing Provision

Non-compellability

47(2) Subsection (1) applies, with any necessary modification, to the staff of the commissioner.

1990-91, c.F-22.01, s.47.

Explanation

Subsection 47(2) is amended to add reference to contractors.

New subsection (3) clarifies that the OIPC staff have the ability to act as a witness in a prosecution.

19 Existing Provision

Application for review

49(1) Where:

- (a) an applicant is not satisfied with the decision of a head pursuant to section 7, 12 or 37;
- (b) a head fails to respond to an application for access to a record within the required time; or

(c) an applicant requests a correction of personal information pursuant to clause 32(1)(a) and the correction is not made;
the applicant may apply in the prescribed form and manner to the commissioner for a review of the matter.

(2) An applicant may make an application pursuant to subsection (1) within one year after being given written notice of the decision of the head or of the expiration of the time mentioned in clause (1)(b).

(3) A third party may apply in the prescribed form and manner to the commissioner for a review of a decision pursuant to section 37 to give access to a record that affects the interest of the third party.

(4) A third party may make an application pursuant to subsection (3) within 20 days after being given notice of the decision.

1990-91, c.F-22.01, s.49.

Explanation

Subsection 49(1) is amended to add new grounds (a.1) to (a.4) for review by the Commissioner.

Subsections 49(1) and (2) are amended to include reference to an individual.

20 Existing Provision

Review or refusal to review

50(2) The commissioner may refuse to conduct a review or may discontinue a review if, in the opinion of the commissioner, the application for review:

- (a) is frivolous or vexatious;
- (b) is not made in good faith; or
- (c) concerns a trivial matter.

1990-91, c.F-22.01, s.50.

Explanation

Section 50 is amended to set out new grounds in clauses (a.1) to (a.7) as grounds on which the commissioner may refuse to conduct a review.

21 Existing Provision

Notice of intention to review

51 Not less than 30 days before commencing a review, the commissioner shall inform the head of:

- (a) the commissioner's intention to conduct the review; and
- (b) the substance of the application for review.

1990-91, c.F-22.01, s.51.

Explanation

Section 51 deletes the 30 day notice requirement.

22 Existing Provision

Notice of application for review

52(1) A head who has refused an application for access to a record or part of a record shall, immediately on receipt of a notice of review pursuant to section 49 by an applicant, give written notice of the review to any third party that the head:

- (a) has notified pursuant to subsection 34(1); or
- (b) would have notified pursuant to subsection 34(1) if the head had intended to give access to the record or part of the record.

1990-91, c.F-22.01, s.52.

Explanation

Subsection (1) is added to remove the reference to “an applicant.”

23 Existing Provision

Commissioner to report

55(1) On completing a review, the commissioner shall:

- (a) prepare a written report setting out the commissioner’s recommendations with respect to the matter and the reasons for those recommendations; and
- (b) forward a copy of the report to the head and:
 - (i) where the matter was referred to the commissioner by an applicant, to the applicant and to any third party notified by the head pursuant to section 52; and
 - (ii) where the matter was referred to the commissioner by a third party, to the third party and to the applicant.

(2) In the report, the commissioner may make any recommendations with respect to the matter under review that the commissioner considers appropriate.

1990-91, c.F-22.01, s.55.

Explanation

Subsection (1) is amended to remove the word “shall” and substitute “may.”

Subsection (2)- no change in substance from subclauses (1)(b) (i) and (ii).

Subsection (3)- no change in substance.

24 **Existing Provision**

Decision of head

56 Within 30 days after receiving a report of the commissioner pursuant to subsection 55(1), a head shall:

- (a) make a decision to follow the recommendation of the commissioner or any other decision that the head considers appropriate; and
- (b) give written notice of the decision to the commissioner and the persons mentioned in clause 55(1)(b).

1990-91, c.F-22.01, s.56.

Explanation

The cross-reference is updated.

25 **Existing Provision**

Appeal to court

57(1) Within 30 days after receiving a decision of the head pursuant to section 56 that access is granted or refused, an applicant or a third party may appeal that decision to the court.

- (4) A third party who has been given notice of an appeal pursuant to subsection (2) or an applicant who has been given notice of an appeal pursuant to subsection (3) may appear as a party to the appeal.

1990-91, c.F-22.01, s.57.

Explanation

Subsections 57(1) and (4) are amended to add reference to an individual.

26 **Existing Provision**

None

Explanation

Subsection 58(7) sets out the appeal provisions to apply with respect to the new clauses (a.1) to (a.4).

Subsection 58(8) sets out the authority of the court with respect to an appeal.

27 **Existing Provision**

Delegation

60(1) A head may delegate to one or more officers of the government institution a power granted to the head or a duty vested in the head.

1990-91, c.F-22.01, s.60.

Explanation

The head may delegate duties or powers to an officer or employee.

28 **Existing Provision**

Directory

64(1) The minister shall cause to be produced, and updated as reasonably required, a directory containing:

- (a) a list of all government institutions;
- (b) a general description of the categories of records in the possession or under the control of each government institution; and
- (c) the title and address of the appropriate officer for each government institution to whom applications for access to records should be sent.

(2) The minister shall cause a copy of the directory to be made available to any government offices, public libraries and municipal offices that the minister considers appropriate.

1990-91, c.F-22.01, s.64.

Explanation

Repealed.

29 **Existing Provision**

Access to manuals

65(1) Within two years after this section comes into force, every head shall provide facilities at:

- (a) the headquarters of the government institution; and
- (b) any offices of the government institution that, in the opinion of the head, are reasonably practicable;

decision-making processes that affect the public by employees of the government institution in administering or carrying out programs or activities of the government institution.

(2) Any information in a record that a head would be authorized to refuse to give access to pursuant to this Act may be excluded from manuals, handbooks or guidelines that may be inspected pursuant to subsection (1).

1990-91, c.F-22.01, s.65.

Explanation

The existing manual requirement in section 65 is amended to require the electronic provision of manuals to the public where it is reasonably practicable to do so.

The new subsection 65.1(1) authorizes a head to establish categories of records to be disclosed on a regular basis without requiring an application for access.

Subsection (2) provides that personal information and third party information will remain protected.

30 Existing Provision**Offence**

68(1) Every person who knowingly collects, uses or discloses personal information in contravention of this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000, to imprisonment for not more than three months or to both fine and imprisonment.

(2) No proceeding shall be instituted pursuant to subsection (1) except with the consent of the Attorney General.

(3) Any person who:

(a) without lawful justification or excuse wilfully obstructs, hinders or resists the commissioner or any other person in the exercise of the powers, performance of the duties or the carrying out of the functions of the commissioner or other person pursuant to this Act;

(b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the commissioner or any other person pursuant to this Act; or

(c) wilfully makes any false statement to, or misleads or attempts to mislead, the commissioner or any other person in the exercise of the powers, performance of the duties or carrying out of the functions of the commissioner or other person pursuant to this Act;

is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000, to imprisonment for not more than three months or to both fine and imprisonment.

1990-91, c.F-22.01, s.68.

Explanation

Subsection (1) increases the penalty for an offence.

Subsection (2) extends the requirement that the Attorney General approve any prosecutions to apply to the entire section.

Clause (3)(d) is added to create an offence of willfully destroying a record to avoid an access request.

The penalty provisions are increased.

Subsections (4) and (5) provide for a new offence for knowingly disclosing information to a third party.

Subsections (6) and (7) create an offence for government institution employees for “snooping”.

Subsections (8) and (9) create an offence for IMSP employees for snooping.

Subsection (10) introduces a two year limitation period for prosecutions under this Act.

31 Existing Provision

Regulations

69 The Lieutenant Governor in Council may make regulations:

(d) prescribing the oath or affirmation to be taken by the commissioner and the commissioner’s staff;

1990-91, c.F-22.01, s.69.

Explanation

New clause (d.1) sets out general regulation making authority with respect to the new subsections 3(3) and (4).

32 Coming into force.