

EXPLANATORY NOTES

B I L L

No. 31

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

Clause of Bill

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

None.

Explanation

New clause (b.1) includes a contractor in the definition of employee.

New subclause (e)(i.1) establishes that the chief of police will be the head for a police service.

New clause (e.1) provides for a definition of information management service provider (IMSP).

New clause (viii.1) provides that police services are added to the definition of “local authority.”

- 4 **Existing Provision**

None.

Explanation

New section 5.1 introduces a positive duty for local authorities to assist applicants.

Subsection (2) provides that a local authority shall provide explanations of any terms used in personal information or endeavour to refer applicants to someone who is able to provide that explanation.

5 **Existing Provision**

None.

Explanation

New clause 7(2)(g) provides for a cross reference to section 43.1 which permits certain applications to be disregarded.

Subsection 7(4) is amended to narrow the list of the type of records that the head may refuse to confirm or deny the existence of.

1990-91, c.L-27.1, s.7.

6 **Existing Provision**

None.

Explanation

The new section 7.1 provides for a process whereby applications may be deemed abandoned.

Subsection (1) provides that where the applicant has not responded within 30 days to a notice from the local authority, the application is deemed to be abandoned.

The head shall send the applicant a notice of abandonment.

Subsection (3) provides that the notice of abandonment may be reviewed by the commissioner within 1 year.

7 **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.

1990-91, c.L-27.1, s.10.

Explanation

Subsection (1); no change in substance.

Subsection (2) provides that where a record is in electronic form the head is to give access to the electronic form where it would not be impracticable or disruptive to the local authority.

No change from previous subsection (3)

No change from previous subsection (2).

8 Existing Provision

Law enforcement and investigations

14(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.L-27.1, s.14; 2003, c.29, s.33.

Explanation

New clause (k.1) allows for an exemption for information that would endanger a law enforcement officer.

Clause (k.2) allows for an exemption for information regarding prosecutorial discretion.

Clause (k.3) allows for an exemption for the information seized pursuant to the authority set out in an Act.

9 Existing Provision

Solicitor-client privilege

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

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

1990-91, c.L-27.1, s.21.

Explanation

The solicitor-client privilege exemption is expanded to include any type of legal privilege.

10 Existing Provision

None.

Explanation

The new section 23.1 introduces a duty to protect personal information for a local authority.

The new subsection 23.2(1) authorizes the local authority to provide personal information to an IMSP for specific purposes.

Subsection (2) creates a requirement that the local authority enter into a written agreement with the IMSP that governs the access to personal information and creates protections for its use or disclosure.

Subsection (3) requires the IMSP to comply with the purposes set out in subsection (1).

Subsection (4) requires the IMSP to comply with any terms of an agreement.

11 Existing Provision

Disclosure of personal information

28(2) Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

(p) where the information is publicly available;

1990-91, c.L-27.1, s.28; 2003, c.29, s.34.

Explanation

New clause 28(2)(p) allows for a category of “publicly available” information to be set out in the regulations.

12 Existing Provision

None.

Explanation

New section 28.1 creates a requirement for a local authority to notify an individual of any improper disclosure or use of their personal information that creates a risk of harm to that individual.

13 Existing Provision

Right of correction

31(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.

1990-91, c.L-27.1, s.31.

Explanation

Subsection 31(1) is amended to include reference to disregarding the request.

Subsection 31(2) is amended to include specific reference to disregarding a request and to set out a requirement to provide reasons why it has been disregarded.

14 Existing Provision**Application for review**

38(1) Where:

(a) an applicant is not satisfied with the decision of a head pursuant to section 7, 12 or 36;

(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 31(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).

1990-91, c.L-27.1, s.38.

Explanation

Subsection (1) is amended to provide for additional grounds pursuant to which an applicant may seek review by the Office of the Information and Privacy Commissioner.

A reference to an individual is added in clause 38(1)(b) and subsection 38(2).

15 Existing Provision**Review or refusal to review**

39 (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;

1990-91, c.L-27.1, s.39.

Explanation

Clauses (a.1) to (a.7) set out additional specific grounds pursuant to which the commissioner may refuse to conduct a review or discontinue a review.

16 **Existing Provision**

Notice of intention to review

40 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.L-27.1, s.40.

Explanation

Section 40 is amended to remove the 30 day notice to a head of the intention to conduct a review.

17 **Existing Provision**

Notice of application for review

41(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 38 by an applicant, give written notice of the review to any third party that the head:

(a) has notified pursuant to subsection 33(1); or

(b) would have notified pursuant to subsection 33(1) if the head had intended to give access to the record or part of the record.

(2) A head shall, immediately on receipt of a notice of review pursuant to section 38 by a third party, give written notice of the review to the applicant.

Explanation

Reference to “an applicant” is removed.

18 Existing Provision

None.

Explanation

The new subsection 43.1(1) provides for a process to authorize a local authority to disregard an application or request under the Act.

(2) The commissioner is directed to consider whether such a request would unreasonably interfere with the operations of a local authority; would amount to an abuse of the right to access because of its repetitious and systematic nature; or if it is frivolous, vexatious, not in good faith or concerns a trivial matter.

Subsection (3) provides that the application or request is considered to be suspended until a decision is made under this section.

Where the commissioner grants an application or request to disregard, that request or application is deemed to not have been made in the first place.

Subsection (5) provides that, if the commissioner refuses the request to disregard, the 30 day period recommences.

19 Existing Provision**Commissioner to report**

44(1) On completing a review, the commissioner shall:

(a) prepare a written report setting out the commissioner’s recommendation 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 41; 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.L-27.1, s.44.

Explanation

Subsection 44(1) provides that the commissioner “may” prepare a written report.

Subsection (2) makes no change in substance from the existing clause 44(1)(b).

Subsection (3); no change in substance from existing subsection 2.

20 Existing Provision

Decision of head

45 Within 30 days after receiving a report of the commissioner pursuant to subsection 44(1), a head shall:

(b) give written notice of the decision to the commissioner and the persons mentioned in clause 44(1)(b).

1990-91, c.L-27.1, s.45.

Explanation

Cross reference updated.

21 Existing Provision

Appeal to court

46(1) Within 30 days after receiving a decision of the head pursuant to section 45 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.L-27.1, s.46.

Explanation

Subsection (1) is amended to include a reference to an individual.

Subsection (4) is amended to include a reference to an individual.

22 Existing Provision

None.

Explanation

New subsection (7) provides for the appeal process for the new grounds of review in clauses 38(1)(a.1) to (a.4).

New subsection (8) sets out to the authority of the court with respect to a review.

23 Existing Provision

Delegation

50(1) A head may delegate to one or more officers of the local authority a power granted to the head or a duty vested in the head.

1990-91, c.L-27.1, s.50.

Explanation

Subsection (1) is amended to include employees for the purposes of a delegation by the head of a local authority.

24 Existing Provision

Directory

53(1) The minister may cause to be produced, and updated as reasonably required, a directory containing:

(a) a list of all local authorities; and

(b) with respect to each local authority, the place at which applications for access to records should be made.

(2) The minister may require local authorities to produce any materials necessary to enable the minister to fulfil the requirements of this section.

1990-91, c.L-27.1, s.53.

Explanation

Repealed.

25 **Existing Provision**

None.

Explanation

Subsection 53.1(1) introduces a requirement for the local authority to make reasonable efforts to make available on their websites manuals and policies used in decision making.

Subsection 53.1(2)- Information that would be exempted from disclosure under the Act must be excluded.

Subsection 53.2(1) authorizes a local authority to establish categories of records that will be considered to be available to the public without an application for access.

Subsection (2) provides that personal information or third party information cannot be disclosed under subsection (1) unless it would be permitted to be otherwise disclosed pursuant to the Act.

26 **Existing Provision**

Offence

56(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.L-27.1, s.56.

Explanation

In subsection 56(1) the penalties are increased.

In subsection 56(2) the requirement for the Attorney General to consent to any proceedings for a prosecution is expanded to apply to the entire section.

Clause (d) is added to create an offence for willfully destroying a record in order to defeat an access request.

In subsection 56(3), the penalties are increased.

Subsections 56(4) and (5) create a new offence for intentionally disclosing information in contravention of the Act.

Subsections 56(6) and (7) provide for an offence for snooping by an employee of a local authority.

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

Subsection (10) creates a two year limitation period for prosecution under this Act.

27 Coming into force.