



# Disclosure of Personal Information “Not Contrary to the Public Interest”

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## INTRODUCTION

Alberta’s *Freedom of Information and Protection of Privacy Act* (the FOIP Act) includes some provisions that are rather exceptional in privacy legislation. **Section 17(2)(j)** and **section 17(3)** in **Part 1** of the Act are intended to make it clear that it is not an unreasonable invasion of a third party’s personal privacy to disclose specified categories of personal information as long as

- the individual concerned has not requested that his or her information not be disclosed, and
- disclosure is not contrary to the public interest.

If personal information falls within the specified categories, and neither of the exceptions applies, a public body can disclose the personal information under **Part 1** to an applicant without formal consultation with the individual concerned (**section 30(1)(b)**) and without consent. A public body may also disclose the information under **Part 2** (**section 40(1)(b)**), without a request under the FOIP Act.

These provisions, which were added in 1999, allow public bodies to disclose limited personal information such as class photos, lists of school and college graduates, and names of visitors to the Legislature Gallery, where the disclosure is not contrary to the public interest.

This Bulletin explains how **section 17(2)(j)** and **section 17(3)** apply when a public body receives a request for disclosure under **Part 2** of the Act. The Bulletin also explains how these provisions apply when a public body is processing an access request. These provisions apply only when public bodies are determining whether to disclose personal information already in their custody or control. The provisions are not relevant when establishing whether a public body can *collect* the personal information. Any collection of personal information by a public body must be authorized under **section 33** of the Act.

Decisions, practice notes or publications issued by the Office of the Information and Privacy Commissioner of Alberta that are cited in this Bulletin may be found on the OIPC website at [www.oipc.ab.ca](http://www.oipc.ab.ca).

## SECTION 17(2)(j) AND SECTION 17(3)

**Section 17(2)(j)** sets out

- a subset of categories of information that it is not an unreasonable invasion of privacy to disclose, and
- the condition that applies to any disclosure under this provision – that it must not be contrary to the public interest.

**Section 17(3)** establishes the condition that it is an unreasonable invasion of privacy to disclose personal information set out in **section 17(2)(j)** if the individual the information is about has requested non-disclosure. The provisions read:

**17(2)** A disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy if

- (j) subject to subsection (3), the disclosure is not contrary to the public interest and reveals only the following personal information about a third party:
  - (i) enrolment in a school of an educational body or in a program offered by a post-secondary educational body,
  - ...
  - (iii) attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip,
  - or
  - (iv) receipt of an honour or award granted by or through a public body.

**17(3)** The disclosure of personal information under subsection (2)(j) is an unreasonable invasion of personal privacy if the third party whom the

information is about has requested that the information not be disclosed.

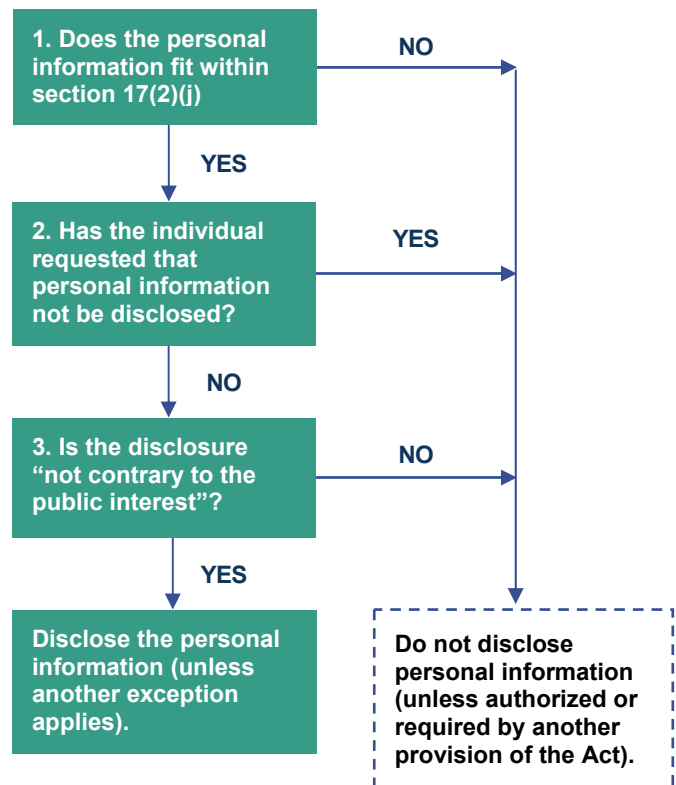
## APPLYING SECTION 17(2)(j)

Most requests for the personal information described in **section 17(2)(j)** are made without any reference to the FOIP Act. For example, a parent may make a request to a teacher or other school staff. The request may be made orally or in writing.

Less frequently, an applicant may make a written FOIP request to a public body for material to which **section 17(2)(j)** applies. For example, a local historian may submit a written request for a series of records to which **section 17(2)(j)** applies, but which may be subject to other exceptions.

Regardless of the form of the request, a public body that believes that **section 17(2)(j)** applies should begin with the same analysis.

The chart below outlines the decision-making process when applying **section 17(2)(j)** of the FOIP Act. The text that follows discusses the steps in more detail. The specific requirements of disclosure under **Part 1** and **Part 2** are then considered.



## 1. Does the personal information fit within section 17(2)(j)?

A public body may disclose personal information under this provision if it reveals *only* the information in one of the listed categories (*Order F2008-004*).

### (i) Enrolment in a school of an educational body or in a program offered by a post-secondary educational body

“A school of an educational body” means a school operated by an “educational body” as defined in the FOIP Act, that is, a school board or regional authority (e.g. a francophone school board), or a charter school. “Enrolment” means the act of entering one’s name on a list or register or the state of being enrolled. Information about “enrolment” would include the name of an enrolled individual and the list or register on which the individual is or was enrolled. Enrolment information would not include other personal information about the individual, such as a home address.

Information to which this provision would apply would include a list of all the students enrolled in a particular high school. It would also include a list of students in a particular program, such as a music program, or in a particular group, such as the grade 12 graduating class.

Information about enrolment may also include information about the enrolment of a *particular* student, that is, the fact that a particular student is enrolled in a school under the jurisdiction of a school board or francophone school board, or charter school.

Information about enrolment may also include historical information about enrolment, for example, a list of students who attended a school under a board’s jurisdiction in past years. This information is commonly requested to facilitate the organization of school reunions and community history projects.

A “post-secondary educational body” means a university, technical institute, public college or the Banff Centre, all as defined in the *Post-secondary Learning Act*. Information about “enrolment in a program of a post-secondary body” would include a list of all the students enrolled in a specific program, for example, an apprenticeship program. Information

about enrolment may also include information about the enrolment of a particular student, such as whether a particular student is enrolled in a specific program at that institution.

Information about enrolment *does not* include information about whether an individual is actually in attendance at the school or post-secondary institution on a particular day, or an individual’s timetable of studies.

### (ii) Attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip

“Attendance at or participation in” an event or activity means being present at, or sharing in or taking part in, the event or activity, as an audience member or an active participant. If an individual was registered to attend an event or participate in an activity but it was recorded that the individual did not actually attend or participate, then the name of the individual would not fall within this provision.

A “public event related to a public body” means something, especially something of importance, that happens or takes place, is of a public nature, and is connected with a public body. A “public activity” means a particular occupation or pursuit that is staged in public and that is connected with a public body. **Section 17(2)(j)(ii)** specifically includes a non-exhaustive list of examples, including a graduation ceremony, sporting event, cultural program or club, and a field trip.

An event or activity is considered “related to a public body” if the event or activity is connected with the public body’s mandate and functions and is organized or sponsored by the public body. An event or activity would *not* be “related to a public body” if the event or activity was not authorized by the public body. An event or activity would also not be “related to a public body” if it was organized or sponsored by a third party that was renting a facility owned by a public body. An event or activity of an arm’s length body such as “Foundations” or “Friends” would not be an event or activity related to a public body.

A “public event” or a “public activity” that is connected with a public body is normally an occasion

when a public body puts its programs on display, formally or informally. The event may be open to either the public in general or to a section of the public with a special interest in events or activities of the public body. A public event or activity is generally something noteworthy in the public body's calendar. It is often publicized and recorded in photos or on video.

Although a public event or activity is often completely open or accessible to the public, access may be restricted because of the nature of the event or activity. Attendance may also be limited for other reasons, such as space or safety concerns; this may be done through ticket sales. Access restrictions like these do not affect the public nature of the event or activity for the purposes of **section 17(2)(j)**.

If an event is advertised in some way and there is no admission restriction, it is definitely a public event. If an event of a public body is staged in a public space and the media attend, whether or not they are invited, the event would be considered a public event. The fact that an event or activity that took place on the premises of a public body was observable by a member of the public *does not* make it a public event or activity.

A "public event or activity" relating to a public body may include such events and activities as:

- open houses
- events organized as part of a fund-raising program
- concerts
- sporting events or competitions
- graduation or recognition ceremonies
- school council functions
- science fairs
- performances of school or post-secondary drama clubs
- intra-mural sports or other competitions
- class or school reunions
- field trips or outings organized by educational bodies

- job recruitment fairs
- public seminars or lectures
- recreation programs in parks, swimming pools or libraries
- art exhibitions

The information within this category may consist of program information, photographs – with or without names – of performers, competitors, or other participants, such as visiting speakers and local officials. Collection of this kind of personal information must have been authorized in the first place. For example, the public body may have collected the information on the basis that it relates directly to and is necessary for an operating program or activity of the public body (**section 33(c)**).

This provision is not limited to information about current events, but also includes information about past events (if the records still exist).

### **(iii) Receipt of an honour or award granted by or through a public body**

Examples of "an honour or award" to which this provision would apply include:

- a graduation certificate or award
- a degree, including an honorary degree
- a scholarship, prize or bursary
- admission to an honour roll
- a prize or award sponsored by a private-sector organization if granted through a public body
- a merit or recognition award
- a long-service or retirement award
- appointment to an honorary office

In order for **section 17(2)(j)(iii)** to apply, the honour or award must be granted by a public body or be granted through a public body on behalf of some other institution or person. For example, many prizes and scholarships at post-secondary educational institutions are funded by private donors or sponsors, but administered entirely by the post-secondary education institution. The award is generally made on the basis

of the recipient's performance in the institution's programs. Private donors and sponsors would have no access to this performance information.

**Section 17(2)(j)(iii)** applies to the "receipt" of an honour or award, so the individual must have received it. This provision does not apply to qualification for, or an offer of, an honour or award if it was not presented, or if it was declined. This provision also does not apply to information about individuals considered for an award but not granted one.

This provision would apply to a list of the names of individuals who have received a particular honour or award. Lists of this kind are often included on plaques on the walls of a public body and programs for award ceremonies and on a public body's website.

Information about receipt of an honour or award would include a photograph taken at an award ceremony or other event at which the recipient received the honour or award.

## 2. Has the individual requested that personal information not be disclosed?

**Section 17(3)** provides that it is an unreasonable invasion of personal privacy to disclose personal information described in **section 17(2)(j)** if the individual has requested that the information *not* be disclosed.

A public body is not expected to seek an individual's consent to disclose personal information to which **section 17(2)(j)** applies. In addition, the Act's provision for consultation about a request for personal information (**section 30(2)**) does not apply to disclosure of information to which **section 17(2)(j)** applies.

However, a public body is expected to have a process in place for notifying individuals that they have the right under the FOIP Act to request non-disclosure, so that they can exercise the right if they wish. Notice of this right can be given in the same way and at the same time as information is given about the collection of personal information. The notice may be given orally, on a form, or in a brochure or other publication.

An individual is not required to provide any reason for requesting non-disclosure of the personal information described in **section 17(2)(j)**. There are many reasons why an individual may request non-disclosure. There may be sensitivity about the individual's enrolment in a particular school or educational program. Or an individual may be concerned that disclosure of information about the individual's attendance at an event or participation in an activity would create a health or safety risk. Or an individual may have a desire for anonymity or privacy.

Public bodies must ensure that procedures are in place so that they can act appropriately in cases where there has been a request for non-disclosure.

For example, some public bodies conduct public fund-raising events for children's programs. A public body that does this can give parents the opportunity to refuse to allow disclosure of photographs of their children that are taken at these public events. The public body can follow the parents' wishes by identifying children whose photographs are not to be disclosed – perhaps with a coloured sticker on their clothing. Any photographs that inadvertently include these children can then be destroyed.

A request for non-disclosure is personal information about the individual making the request and is subject to the FOIP Act.

## 3. Is the disclosure "not contrary to the public interest"?

**Section 17(2)(j)** states that it is not an unreasonable invasion of privacy for a public body to disclose the specified personal information if disclosure of the information is "not contrary to the public interest."

"Public interest" has been identified with "long-term community values" (in relation to a *Charter* issue in *R. v. Collins*, [1987] 1 S.C.R. 265). "Not contrary to the public interest" may be understood as not inconsistent with long-term community values, or with the good of society at large.

A public body is not required to find that a disclosure *promotes* a public interest, simply that disclosure is "not contrary to" the public interest.



It should be noted that the context of the phrase “public interest” differs from the context in **section 32(1)(b)** and **section 93(4)(b)**; it is unlikely that Commissioner’s decisions under those provisions would be relevant to **section 17(2)(j)**.

Cases where disclosure would clearly be contrary to the public interest include the disclosure of information that could be used to commit a criminal act, or harm an individual or property. A public body may decide that a disclosure would clearly be contrary to the public interest on the basis of its knowledge of risks to its clientele or the nature of the request.

It may also be contrary to the public interest to disclose personal information as described in **section 17(2)(j)** if the disclosure would reveal, or allow a person to infer, other personal information, particularly sensitive information. In *Investigation Report 2002-IR-001*, the Commissioner stated that the ability to release personal information because an award is attached should not be used to disclose sensitive personal information.

In some cases, a public body gives individuals an opportunity to request non-disclosure and an individual has not done so. Even so, the public body still has to consider whether it would be contrary to the public interest to disclose the individual’s personal information.

In *Investigation Report 2002-IR-001*, the Commissioner said that public bodies should consider the expectations of an ordinary person as to how his or her privacy will be respected. In the case that was investigated, a school board released an achievement test mark, even though Alberta Learning’s policy was that these marks should not be released publicly. The Commissioner found that the school board had breached the student’s privacy.

Another factor that should be considered in determining whether disclosure is contrary to the public interest is whether the information is likely to be inaccurate or unreliable. For example, the record may not be accurate if a public body kept a record of registration or payment to attend an event, but did not record who actually attended.

A public body that receives a request for personal information that falls within one of the categories in **section 17(2)(j)** should also consider whether the public body collected the information in the first instance. **Section 17(2)(j)** provides for disclosure of personal information by *a* public body, not necessarily the public body that originally collected the information.

It may be contrary to the public interest for a public body to disclose information if the public body is not familiar with all the circumstances surrounding the program for which the information was collected. It may also be contrary to the public interest to disclose information if the public body does not know what steps were taken at the time the information was originally collected to let individuals know about their right to request non-disclosure. Public interest may also be an issue if a public body does not know whether it has all records of requests for non-disclosure.

On the other hand, **section 17(2)(j)** provides for disclosure by *a* public body. This permits disclosure in certain cases where it is entirely appropriate for a public body to disclose information in records received from another public body. For example, it would not be contrary to the public interest for the Provincial Archives of Alberta to disclose information about enrolment in a school in school records that were transferred to the Archives for permanent preservation.

Some factors will clearly weigh *in favour of* disclosure. For example, disclosure will not be contrary to the public interest if disclosure is consistent with the purpose for which the information was collected. Making information about the award of an honorary degree public is clearly part of the purpose of awarding honorary degrees.

The fact that personal information in the specified categories had already been made publicly available in some authorized way may also weigh in favour of finding that disclosure would not be contrary to the public interest. For example, if information about a public event was reported in the media, it may not be contrary to the public interest to disclose that information to a requester.

This might also be the case if the individual the information is about has already made the information public. A public body may also take into consideration that information in its historic records was made public at the time when the event took place.

## DISCLOSURE UNDER PART 2

**Section 40(1)(b)** states that a public body may disclose personal information if the disclosure would not be an unreasonable invasion of a third party's personal privacy under **section 17**. **Section 40(1)(b)** *permits*, but does not *require*, a public body to disclose personal information.

**Section 40(1)(b)** enables a public body to disclose the information described in **section 17(2)(j)** as long as the individual has not requested non-disclosure and disclosure is not contrary to the public interest.

**Section 40(1)(b)** does not limit disclosure by specifying a purpose. However, a public body may consider any circumstances relevant to the disclosure and may limit the purposes for which information may be used by the recipient. Requests for disclosure should be considered on a case-by-case basis.

Examples of requests for personal information described in **section 17(2)(j)** where disclosure would likely be permitted under **section 40(1)(b)** would include:

- a request from a school council for a list of students of a school
- a request from organizers of a reunion or other social event for a list of past students in a school, or a college or university program
- a request from graduation event organizers or the local paper for a list of the grade 12 graduating class
- a request from a prospective employer for information as to whether a student is enrolled in a particular school, or a particular college or university program
- a request from organizers of a school trip for a list of children on a field trip to provide to the person designated to receive the visitors

- a request from a local historian for programs for performances of a school's drama club

If the individual the information is about has requested that the information not be disclosed, that individual's information must not be disclosed unless another provision of **section 40** authorizes the disclosure.

A public body should disclose only the information that is necessary for the person requesting the information to meet the purpose identified.

Public bodies should ensure that delegation of responsibility for dealing with such requests is at an appropriate level of the organization. Staff responding to such requests should already have some responsibility for the collection and protection of this personal information. Front-line staff should be trained on the public body's policies on disclosing personal information. They should also have some knowledge of the circumstances surrounding its possible use by the individual requesting disclosure.

## PROCESSING A FOIP REQUEST UNDER PART I

If a FOIP request is received, the FOIP Coordinator will review the records and apply **sections 16 to 29** of the FOIP Act, as appropriate.

**Section 17(2)(j)** and **section 17(3)** apply for the most part in the manner described above with respect to disclosure under **Part 2** of the Act. However, a public body responding to a request under **Part 1** must apply the exceptions to disclosure without regard to the applicant's *reasons* for requesting the information (which may be a factor under **Part 2**).

In both cases, a critical consideration will be whether disclosure is "not contrary to the public interest." In responding to a request under **Part 1**, the public body must make this decision on the basis of factors such as the nature of the request and its knowledge of risks to its clientele.

A public body must be careful not to inadvertently disclose personal information about an individual who has requested non-disclosure. When responding to a FOIP request, a public body should be careful not to cite **section 17(3)** as a reason for non-disclosure, since that would reveal that the individual had requested

non-disclosure. Non-disclosure under these circumstances would be authorized by **section 17(1)** – that it would be an unreasonable invasion of a third party’s personal privacy.

### THIRD PARTY NOTIFICATION

**Section 30(2)** states that the notification provisions of **section 30(1)** do not apply to a record containing information outlined in **section 17(2)(j)**. If the information sought by an applicant falls within **section 17(2)(j)**, **section 30** does not apply and cannot be used as a reason to extend the time for response.

#### Currency

This Bulletin takes into consideration decisions issued by the Office of the Information and Privacy Commissioner of Alberta up to December 31, 2008.

#### Purpose

FOIP Bulletins are intended to provide FOIP Coordinators with more detailed information for interpreting the *Freedom of Information and Protection of Privacy Act*. They supply information concerning procedures and practices to assist in the effective and consistent implementation of the FOIP Act across public bodies. FOIP Bulletins are not a substitute for legal advice.

#### Further Information

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