



**Freedom of Information
and Protection of Privacy**

QUESTIONS & ANSWERS

LOCAL GOVERNMENT

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Introduction

This is a new edition of the “Questions & Answers for Local Governments”. It updates the references to the *Local Government Act*, *Community Charter* and the *Freedom of Information and Protection of Privacy Act*.

Many thanks to Stephen Fleming, City of Kelowna and Paul Hancock, City of Vancouver for their assistance in putting this revised edition together. Also thanks to Sharon Plater and Phil Jennings of the Information, Policy and Privacy Branch of the Ministry of Labour and Citizen’s Services for their help in getting this document published.

Any questions concerning this document as well as other questions concerning the *Freedom of Information and Protection of Privacy Act (the Act)* in relation to local governments can be directed to the Information, Privacy and Records Branch at the Ministry of Community Services.

Throughout this document we have provided links to the Freedom of Information and Protection of Privacy Policy and Procedures manual located on the Ministry of Labour and Citizen’s Services’ Information, Policy and Privacy Branch’s website. Please note that this manual has not yet been updated to reflect the recent changes to the Act. A summary of the amendments made to the Act made under Bill 73 can be found at <http://www.mser.gov.bc.ca/privacyaccess/>.

If there are additional Questions and Answers that you would like included in this publication, please contact the Director, Information, Privacy and Records Branch at the Ministry of Community Services (250) 387-7917.

General Questions & Answers

Archaeological sites

Can local governments release information received from the provincial Archaeology Branch with respect to the locations of known archaeological sites?

Site information is provided to local governments as a tool to assist the issuance of building or development permits. Under the *Heritage Conservation Act* it is an offence to “damage, excavate, dig in or alter” any sites defined in the Act without a permit. Local governments can verify the absence of any known site from the proposed development area by cross checking the information provided by the Archaeology Branch. Information about the presence of a site can be released to anyone who can establish a “need to know” with respect to the information. For example, a property owner, a developer, a realtor or a lawyer would all have valid reasons for having this information. Please note that the examples are not limited to the ones provided here, as the test is the need to know plus the second expectation that no harm will occur, i.e. harm or interference with conservation efforts. A university student doing a thesis may also be a good example of need to know, where no harm would result. A request for information by someone who is just “interested” in collecting this material should be refused and can be refused under section 18 (harm to heritage sites) and 15(1)(k) (facilitation of an offence) of the FOIPP Act. The basis for the protection of the information is to preclude people who are interested in collecting artifacts from plundering the known sites.

Building Plans and Lot Survey Plans

Can building plans and lot survey plans be released routinely?

No. Building plans and lot survey plans are copyrighted. The Federal *Copyright Act* permits the release of one copy under FOI legislation. Therefore, even though the information in these documents is not protected from disclosure, these plans can be released only as part of the FOI request management process.

Building plans or lot survey plans contain very little, if any information that is protected from disclosure under the Act. Plans showing the location of the building on the lot, its height, the location of any doors, windows or any other details observable from the road could not be refused under the Act. The only exception may be detailed diagrams or schematics of a security system, the release of which could jeopardize the security of the building and thus could be withheld under Section 15(1)(l) of the Act. (See also the online FOIPPA Manual for Section 15 at:

http://www.mser.gov.bc.ca/privacyaccess/manual/sections/sec10_19/sec15.htm)

Even though the property owner paid for these records, other members of the public may obtain copies. The applicants, however, are bound by copyright. They cannot make further copies of the plan or use it as documentary evidence in a separate submission to the local government without permission of the holder of the copyright. It is a good practice to stamp such document with “This information has been provided subject to the Federal *Copyright Act* and in accordance with the Provincial *Freedom of Information and Protection of Privacy Act*.”

Bylaw Complaints

Are records of prior bylaw enforcement complaints related to a specific property or individual accessible under FOI?

Generally, records of prior bylaw enforcement complaints related to a specific property would be accessible if the investigation has been completed and once all third party personal information is severed. Records of bylaw enforcement complaints against individuals would be accessible, but without personal identifiers.

Note that in most cases the removal of personal identifiers will be sufficient to protect individuals' identities, but in some cases it may be possible to identify individuals through some other information in the record, from the context or substance of the complaints. In any case, where the identity of third party individuals can be ascertained or deduced from the information in the record, that information is personal information for the purposes of the Act.

Third party personal information must be severed from the complaint files before the records containing the history of previous bylaw enforcement issues on a property or individual are disclosed. Under section 15 (1) (d) and section 22 (3) (b), the identity of the complainant would normally not be disclosed, particularly when documented policies and procedures designed to ensure the confidentiality of complainant's identities are in place.

If an applicant asks for complaints about a specific person, the request would be denied even if the identifiers were severed since the applicant will still know who they are about.

Contract Records

Can copies of contracts with consultants, engineers, and other contractors be released?

Generally, copies of contracts will be released after they have been awarded on the premise that the public has a right to know who has been engaged to do work for the public, and what is being paid for that work. However, there is some information that may be contained in a contract that would not be released.

If the contract details include unit pricing or proprietary information, this information may be severed provided it meets the three part test in section 21 (Disclosure harmful to the business interests of a third party). See the Information and Privacy Commissioner's Order numbers 00-24, 03-15 and 03-33 for more information about contracting. If the contract's Terms of Reference include resumes, obtain consent before releasing; otherwise these would be withheld under section 22.

Correspondence from the Public

Can correspondence to the Mayor outlining a complaint or questioning the actions of the Local Government be forwarded to Staff without removing the name and address on the letter?

Section 33.2 (c) of the *Freedom of Information and Protection of Privacy Act* (the Act) permits the disclosure of personal information to employees of the public body if it is required by those employees in the performance of their duties. In most cases the employee will need to know the name of the individual in order to investigate the concerns. However, if staff can deal with the issue without having the name and/or address of the complainant, then this information should be removed before forwarding the correspondence. Other sections that may apply here are sections 33.2 (d) and (e).

Is a public body required to sever libellous comments from letters of complaint before releasing them under FOI?

If the applicant is the subject of the comments, there is no authority for a public body to sever such comments from letters of complaint prior to releasing them under the Act, as it is the personal information of the applicant. However, if the applicant is not the subject of the comments, the information is the personal information of the person the comments are about, and may be severed.

The examples of personal information in the Policy and Procedures Manual states that anyone else's opinion about an individual is the personal information of the individual they relate to.

Does the Act restrict public access to information submitted to the Local Government regarding planning matters, such as letters of objection to a planning proposal?

Generally, the public will continue to have access to such information, including the names of individuals objecting to a planning proposal. The planning process is intended to be a public process and notices must be published prior to changes taking place through such means as zoning, variances or community plans. To eliminate uncertainty about the release of personal information, public notices of planning proposals should specifically state that respondents' identities will be made public.

If the planning process in question is governed by a section of the *Local Government Act* that authorizes public disclosure in relation to planning matters, the local government may disclose personal information as required by the *Local Government Act*, Part 26.

Section 33.1(1)(c) of the Act permits a public body to disclose personal information for the purpose of complying with an enactment of British Columbia.

Council and Mayor

Council Meetings - Reference to Confidential Report During Public Meeting.

If a Member of Council refers to information in a confidential report in debating the merits of a matter, is this report now accessible to the public?

No. The report would not automatically be released if someone quoted a segment from it at a public meeting. Section 12 (3) (local public body confidences), provides that a record will become accessible under the Act if it is considered in a meeting open to the public. Simply a reference to information in a confidential report would not make the whole report publicly accessible, since the report has not been considered in a meeting open to the public.

See also section 117 of the *Community Charter* – Duty to respect confidentiality

Council Members – Expenditures

Are expenditures by Council members in the performance of their functions public information?

Yes. If an FOI request was submitted for this information, the public body would release it under section 22(4)(e) and (h). It is not an unreasonable invasion of third parties personal privacy if the information is about councillors' remuneration or expenses paid by the public body. The *Financial Information Act* would also require disclosure of this information. If the request asks for copies of receipts, there may be some information that should be withheld under section 22 of the Act (i.e., credit card numbers, etc.).

Council or Board Meetings - Tapes of Meetings

Can the tapes of council or board meetings be withheld if a request is received before a written transcript has been made and they are destroyed?

No. If a request were received for a tape recording of a meeting while the tape is still available, the public body would have to make the tape accessible.

If the tape is of a public meeting, it does not need to be reviewed, as it is releasable in its entirety. If an in camera meeting was taped, it would have to be reviewed, and much of the information would be subject to section 12(3)(b) (in camera meeting deliberations). Other exceptions may also apply. The local government would then arrange to have the tape edited to sever such information.

Tapes must only be destroyed in accordance with a properly approved records destruction schedule.

In-Camera Meetings

Are staff reports considered by Council in a closed meeting routinely released once the matter has been decided and made public?

No, reports dealt with at a closed meeting do not automatically become public once the matter has been decided and the decision made public. If the reports were appropriately dealt with in a meeting not accessible to the public as provided for in section 90 of the *Community Charter*, some or all of the information may be protected from disclosure.

Section 12 (3)--Local public body confidences--is a discretionary exception for information that would reveal drafts of bylaws, resolutions or other legal instruments, and for the substance of deliberations of closed meetings. Refer to section 90 of the *Community Charter*. In most cases, section 12(3)(b) cannot be used to withhold the strictly factual portions of an *in camera* report. It can, however, be used to withhold the information that reveals the "substance of deliberations" (what was discussed at the meeting), such as the recommendations section. Other exceptions may apply to the factual portions.

Note that the 12 (3) exception would not apply to records once a matter has been discussed in a meeting open to the public or if the information is more than 15 years old.

In deciding whether to release material from a closed meeting, consider whether other exceptions apply. Examples of other exceptions are: section 13 - policy advice or recommendations; section 14 - legal advice; section 17 - disclosure harmful to the financial or economic interests of a public body; section 21 - disclosure harmful to business interests of a third party; or section 22 - disclosure harmful to personal privacy. In the event another exception applies, the public body will review the record to sever information covered by the exception and release the remainder of the record.

These exceptions usually enable a public body to refuse to divulge information related to the three "L's", land (acquisition), labour and legal issues. See on-line FOIPPA Manual for interpretations and specific examples at:

http://www.msar.gov.bc.ca/privacyaccess/manual/sections/sec10_19/sec12.htm

See section 117 of the *Community Charter* for general comments regarding the release of confidential and closed meeting information. In addition, see section 26 of the *Community Charter* for the requirements for publication of notices before a council disposes of land or improvements that will probably have been discussed at a closed meeting.

Letters to Mayor and Council

Is it still appropriate (under the Act) to put correspondence sent to the Mayor and Council on the agenda of a public council meeting?

Yes, in most instances it is reasonable to expect that letters written to Mayor and Council or to the Board of Directors or Trustees would be placed on the agenda. There may be instances, however, where it would be inappropriate for the information to be discussed in an open forum.

Normally, a local government's procedural bylaw and/or policy would provide a process for correspondence to the Mayor and Council to be included on the Council agenda. Because the bylaw or policy is a public document and reflects established practice, correspondents usually understand that the issues they raise will be considered in an open Council meeting.

There may be cases, however, where the correspondent specifically requests confidentiality or has provided personal information to support their issue. In these cases, the public body is required to consider the interests of the correspondent in deciding whether the correspondence or issues raised should be considered in an open meeting. A local government officer will normally make this determination in accordance with the principles of the Act. (See the *Freedom of Information and Protection of Privacy Act* Policy and Procedure Manual (Manual) Section 33 at the following internet address:

http://www.msar.gov.bc.ca/privacyaccess/manual/sections/sec30_39/sec33.htm)

Election-related records

What access may be given by local governments to election-related records?

Chief election officials are responsible for personal information throughout the election process. Personal information in this context includes but is not limited to:

- the names and addresses of registered voters (list of registered electors),
- the home addresses of the candidates (the nomination documents and disclosure statements), and
- the names of campaign contributors (disclosure statements).

Public inspection of election records: The *Local Government Act* contains provisions (which are described in detail below) that permit the public to inspect the documents in person at the offices of the local government body during normal business hours. In many cases, members of the public are required to sign a statement that they will not inspect the document or use the information in it except for election-related purposes. These provisions are, presumably, intended to impose some limits on access to personal information, while maintaining reasonable access for legitimate election-related purposes.

The *Local Government Act* provisions relating to access to election-related records are as follows:

- Section 62(2) provides that the list of registered electors must include the names and addresses of all electors and must indicate whether a person is an elector or a non-resident property elector. Section 62(3) gives the right of public inspection of the list and section 62(8) gives each nominee the right to one copy of the list. Section 63 requires that the chief election officer must amend the list that is available for public inspection or that is given to candidates by omitting or obscuring personal information about the elector when requested to do so by that elector for privacy reasons.
- Section 72 requires nominees to file nomination documents. Section 73(6) gives the right of public inspection upon the signing of a statement that the person will not inspect the documents or use the information included in them except for the purposes of this Act.
- Section 90 requires candidates to file disclosure statements containing, among other items of information, the names of all individuals who have contributed \$100 or more. Section 93 provides that the statements are available for public inspection upon the signing of a statement that the person will not inspect the documents or use the information included in them except for the purposes of this Act.
- Finally, section 150(3) provides that other election-related records such as voting books must also be made available for public inspection upon the signing of a statement.

When members of the public are inspecting election-related records in accordance with the *Local Government Act*, they may take notes if they wish.

Requesting copies of election records: The *Community Charter* permits members of the public to request a copy of any record (or portion thereof) that is available for public inspection (section 95(3)). You may not charge a copying fee for providing copies of election-related materials (section 194(3)). Before you provide copies of documents under section 95(3) of the *Community Charter*, it is good practice to require members of the public to appear in person and also sign an inspection statement if required by the relevant sections of the *Local Government Act*.

Freedom of information requests cannot be made for election records that are available for public inspection under the *Local Government Act*. See Order 04-01 of the Information and Privacy Commissioner, in which he upheld the decision of a local government body not to respond to an FOI request for disclosure statements. Therefore, the only way to request copies of these types of records is under section 95(3) of the *Community Charter*.

Other methods of disclosure of election-related records: While personal information is available for public inspection under the limited circumstances set out in the *Local Government Act*, there are still restrictions on other methods of disclosure of the information. For example, the FOI Act may not authorize local government bodies to disclose election-related personal information in a press release or post it on their websites. Disclosing the names of electoral candidates is acceptable. Disclosing other types of personal information may, however, put you in violation of section 30.1 of the FOI Act, which requires a public body to ensure that personal information in its custody or under its control is stored only in Canada and accessed only in Canada.

Fire Reports

Who has custody and control of Fire Reports on fire investigations prepared pursuant to section 9 of the Fire Services Act by local area fire assistants with copies maintained in the local fire department files?

Fire reports entered into the automated system by local area fire assistants are presumed to be under the control of the Office of the Fire Commissioner (OFC). Therefore, all requests for these reports should be transferred to the OFC. If any severing of personal information is required, the request is treated as an FOI request and release is handled by the Information, Privacy and Records Branch of the Ministry responsible. (currently the Ministry of Public Safety and Solicitor General)

Invoices from Lawyers

If a request were made for detailed legal invoices - what information on the invoices would be released?

Generally, no information in legal invoices is releasable as the details may divulge the strategy or grounds on which a legal case is being based or disclose personal information. The public body would assess the information contained in an invoice and determine whether it is information that would fall under sections 14, 17, and 22. See the Information and Privacy Commissioner's Orders 179-1997, 328-1999, 329-1999 and 02-07 for more information about this subject. The total amount paid to a lawyer in a calendar year is releasable under the provisions of the *Financial Information Act*. The invoices themselves are considered to be privileged legal communications.

Licensed Events

When financial reports are required on completion of a licensed event, are they releasable to the public?

Yes, reports containing information on a licensed event would normally be routinely available. However, if these reports contain information on other aspects of the organization or operators, a formal FOI request for access to the reports may be required. Before releasing such reports, the public body must review the report to ensure that it does not contain information that would be subject to either section 21 (Disclosure harmful to business interests) or section 22 (Disclosure harmful to personal privacy).

Licences, Permits and Variances

Licences, Permits and Variances – Release of Information

If a person submits an application for a permit, licence or other benefit, including a building or development permit, a (zoning) variance or a dog licence, is the application or actual permit releasable? Would a local government have to sever the applicant's name and address?

A description of the permit, licence, variance sought and the property to which it relates, including the name of the applicant may be released routinely.

In determining what information should be routinely released, consideration should be given to whether the provisions of the Act dealing with a formal request would result in the release of the information. If the information would be disclosed in response to a formal request, it could be considered for inclusion in a "routine disclosure" policy.

In the case of a formal FOI request, paragraph 22(4)(i) states that it is not an unreasonable invasion of personal privacy to disclose personal information that constitutes the "details of a permit". This information would include the name of the applicant. Other personal information supplied in support of the application would not necessarily be disclosed.

For example, for building permits, the applicant's home address would not be released if it were not the subject property. For dog licences, the applicant's name could be disclosed but not the home address.

The local government may continue to disclose the name, address and phone number of dog owners to the SPCA or a contracted pound for uses consistent with the local government's animal control activities. Section 33.2 (a) of the Act permits a public body to disclose personal information, inside Canada only, for purposes that have a direct connection with and are necessary for the purpose for which the information was originally collected.

Section 33.2 (a) of the Act also permits a local government to disclose information to the SPCA in the absence of a contract, if the purpose of disclosure is consistent with the local government's purpose in collecting the information. The mandate of the SPCA under section 12 of the *Prevention of Cruelty of Animals Act* includes seizing, holding and returning animals to their owners or disposing of lost and injured animals, activities consistent with the animal control purposes for which the local government collects licence information. In many cases, the only way the SPCA can locate the owner of a lost or injured animal is through the local government's licence information.

Listings of Building Permits

Monthly listings of building permits have been provided to the public in the past without restriction. Can we continue this practice? (Note: This question applies to issued permits and not permits applied for but not yet issued.)

Yes, the monthly listing would be considered public information and could be released routinely in whatever manner the local government determines. These lists include the property location, value of construction, size of building and use of property (e.g., single family dwelling, multi-family dwelling, and commercial). The specific items listed above are property related information, not personal information.

The local government can also release names and addresses of businesses connected with the permits, such as the name of a contractor or subcontractor responsible for work done under the permit. The exception protecting personal privacy (section 22) does not extend to business activities.

The local government can also release any personal information that constitutes the "details of the permit". Under paragraph 22(4)(i), it is not a unreasonable invasion of an individual's privacy to disclose information that "reveals details of a licence, permit or other similar discretionary benefit" granted to the individual by a public body. Thus the name of the applicant for a building permit can be released, even when the applicant is a private individual. The information noted above can be released routinely, even though the information may be used for mailing lists or solicitations.

Paragraph 22(4)(i) does not, however, require the release of additional personal information supplied in support of a permit application. For example, an individual permit applicant's home address (if different from the property to which the permit applies), phone number, or how long the person has owned the property is not considered to be "details of the permit". The local government would not routinely release such additional personal information about the permit applicant.

Does the word "can" in the above question mean that a local government has discretion to release the information or not?

No. If personal information falls under section 22(4) of the Act, it must be released. The public body does not have discretion to withhold this information if a formal request under the Act is made for it, unless another exception applies to it (e.g. section 19 - Disclosure harmful to individual or public safety).

Listings of Licensed Businesses

Is a list of licensed businesses within a local government area public information?

Yes, a list of licensed businesses within a local government area can be considered public information and routinely released. The list may contain the following: name and location of the company; names of principals or officers of the company; type of business and product(s) produced. Additional business information should be reviewed in light of the protections provided in section 21 (Disclosure harmful to business interests of a third party).

It should be remembered that section 22 (Disclosure harmful to personal privacy) applies to individuals not to businesses. For example, after-hour emergency contact information including an individual employee's home phone number would not be releasable.

The one area where it may be difficult to distinguish between business and personal information is when a business is a sole proprietorship and personal information is intertwined with the business information, especially for home based businesses. Usually when a home address is used as a business address, the right to privacy is assumed to be foregone. This is further strengthened by amendments made to the Act in 2004, when the definition of *personal information* was amended to the following:

- Personal information means recorded information about an identifiable individual other than contact information.
- Contact information means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.

Sharing Information on Licences and Permits by Bylaw Enforcement Officers

Can bylaw enforcement officers continue to share information contained in supporting documents submitted by individuals for licences with other law enforcement agencies?

Yes, a public body may disclose personal information to another public body or a law enforcement agency inside Canada under section 33.2 (i) if they are satisfied that there is an active investigation underway under 33.2 (a), or a law enforcement agency and section 33.1 (1) (i). This precludes the sharing of information for the purposes of a "fishing expedition".

Negotiations

Does a local government have to release information/records that are created in the course of the negotiation process?

Yes and No. Once the negotiations have been completed most of the information could likely be released subject to exceptions (e.g. sections 13, 14, 17, 21). During negotiations, information about the positions, options, instructions, and criteria or strategy to be used in negotiations may be withheld under section 17(1)(e). However, information from completed negotiations is not covered under this section unless the negotiation was not made public and will be used again.

Negotiations with aboriginal governments concerning aboriginal self-government or treaties may be withheld under section 16(1)(c).

Petitions or Form Letters

May petitions or form letters submitted to a local government and discussed at a public meeting be released?

Usually, a local government may release this information under subsection 33.2 (a) of the FOIPP Act, which permits disclosure for a consistent purpose. Citizens from time to time provide feedback in the form of petitions and form letters listing their names, addresses and signatures, to express support or opposition to an issue and to establish their legitimate interest in the matter. Since the intent of such petitions is to demonstrate the degree of public support for or opposition to the subject matter of the petition, individuals who complete them normally expect that they will be used for discussion purposes and that it will be part of the local government's public record.

There may be instances where petitions are not discussed in an open meeting because disclosing the names of the petitioners would create a threat to the health or safety of the individuals involved. Each such petition would have to be judged on a case-by-case basis to determine if it can be withheld under section 19 of the Act.

Under section 82 of the *Community Charter* a petition to council is deemed to be presented to council when it is filed with the corporate officer.

Potential Developments

If local government officials have knowledge of a potential development as a result of a developer making informal approaches to the local government, are they at liberty to make such information public at this stage?

The *Freedom of Information and Protection of Privacy Act* would not govern this situation unless a request was made for records pertaining to the potential development. Normally there is an expectation of confidentiality between the officials of a local government, and the developer at this preliminary stage. However, as soon as all documentation for an application is complete and a bona fide application is submitted to the local government, that information is public.

If a formal FOI request were made for records submitted by the developer prior to a bona fide application being submitted and open for public inspection, the public body would review the records to determine whether they would be subject to exception under section 21 (Disclosure harmful to the business interests of a third party). The public body may also want to provide the third party with notice under section 23 of the Act and receive the third party's submissions regarding possible release. To withhold the information submitted by the developer under section 21 all three parts of the test in section 21(1) must be met. Section 17 may also apply with respect to the economic interests of the public body.

Routine Inspection Reports

If routine inspection reports contain third party information, can access be denied to such reports?

Normally routine inspection reports will not contain any third party information that a public body would be prohibited from releasing. Section 15 (3) (a) provides that routine inspection reports may not be withheld. The definition of routine inspection reports does not include complaint driven inspections. In the event that a "routine" inspection report contains third party personal information that falls under section 22 (3) or business information that meets the three-part test under section 21 (1) the information must be severed before the report is released.

Complaint driven reports generally fall under bylaw enforcement. The law enforcement exception may apply to some information in these reports and third party personal information would also be severed.

Taxes

Parcel Tax Rolls

Can any member of the public view parcel tax rolls?

Yes, the parcel tax rolls are available to members of the public. Section 33.1 (1) (c) permits a public body to disclose personal information for the purpose of complying with an enactment. Section 203(3) of the Community Charter provides that tax rolls must be available for public inspection.

Taxes – Not Paid on Specific Property

Can a Local Government disclose to a bank whether or not taxes have been paid on a particular property?

Yes, a local government may disclose the amount of unpaid taxes on specific property even if the information pertains to a private residence. This disclosure is authorized under section 249 of the *Community Charter*. Section 33.1 (1) (c) of the FOIPP Act permits disclosure of personal information by a public body for the purpose of complying with an enactment, in this case the *Community Charter*. To charge a fee for a copy of this information, local government must have the charge listed in the Fees and Charges Bylaw.

Tax Sale List

The Municipal Tax Collector maintains a list of properties that will be subject to Tax Sale unless delinquent taxes are paid by a certain date. Can this list be released?

Yes the list can be released. Section 33.1 (1) (c) permits a public body to disclose personal information to comply with an enactment of British Columbia. Section 405 of the *Local Government Act* requires that tax sales are public and must be advertised. Therefore, a list of properties subject to tax sale can be released. Refer also to *Community Charter*, Section 249.

It is a good practice to have a policy as to whether the names of purchasers are made public or not. Some local governments announce the name of a purchaser at a tax sale, while others do not. The purchaser is required to complete an Acknowledgement of Purchase of Property at Tax Sale form, and the Collector completes a Certificate of Sale. The form and certificate should clearly state whether any personal information contained on these documents is protected or not.

Property Taxes – Request by Ministry of Employment and Income Assistance

The tax collector of a municipality is requested by the Ministry of Employment and Income Assistance investigator to disclose who has paid the property taxes on a residence of an income assistance recipient. Can this information be disclosed by the public body?

Generally, tax collectors would not be in a position to accurately state who paid the taxes on a particular property. Unless there is a means for them to know accurately who paid such taxes, they may not disclose this information.

If tax collectors were in a position to accurately provide such information, they could disclose it to the Ministry of Employment and Income Assistance under section 33.1 (1) (i) (i) of the Act if the Ministry could provide sufficient evidence that there was a debt owing to the Government of British Columbia. Alternatively, if the Ministry had authority and was conducting an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result, the public body could exercise their discretion to disclose this personal information under section 33.2 (i) (ii) of the Act.

The Ministry of Employment and Income Assistance also has the authority to verify information provided by applicants for assistance. If an applicant stated that they had paid taxes on the property, the Ministry would be able to contact the municipality to verify this fact.

Requests from the Ministry should be made in writing and on Ministry letterhead.

Testing of Equipment and Products by Public Body

If a public body tests equipment or products purchased from various manufacturers, are the results of the tests accessible under FOI?

Yes and No. There are only two circumstances that would permit a public body to withhold the results of such testing. Section 17 (3) (a) and (b) provides a harm test that if met would permit the public body to withhold the result of testing under Section 17(1) if the public body conducted the tests on behalf of a third party for a fee, or if the testing was done for the purpose of developing testing methods.

The results of any testing of products done by or for the public body itself would be accessible under both section 13 (2) (h) and section 17 (3). If the testing occurred as the result of routine inspections, section 15 (3) (a) requires that the results must be released.

Volunteers

Are records about volunteers accessible under the Act?

It would depend on whether or not the local public body has custody or control of the records. If the records are in the custody or under the control of the public body, then they may be requested under the Act.

For example, a volunteer's records would be under the custody and control of the public body if the local government has asked a volunteer to research a proposal on behalf of the public body, or if a volunteer regularly assists in a program or activity of the public body, and the records are created during the course of such activity. Another example of volunteers' records being under the custody or control of the local government would be records of volunteer fire-fighters that relate to their duties as fire-fighters. However, volunteer fire-fighters' records of activities unrelated to fire-fighting, such as fundraising ventures, might not be under the custody or control of the public body.

Voter's Lists

Candidates for election must be provided with a copy of the list of registered electors. Are they restricted in their use of such list following the election?

Yes, the candidates may only use the list of electors for the purposes of an election. Section 62 (9) of the *Local Government Act* requires candidates to sign statements that they will use the lists only for the purposes of an election. Section 63 of the *Local Government Act* allows the electoral officer to withhold the address of an elector at their request in order to protect their privacy or security. This disclosure of personal information to candidates through the electoral lists is permitted under section 33.1 (1) (c) of the FOIPP Act to comply with the requirements of the *Local Government Act*.

Personal Information

Cemetery information

Can cemetery records be released?

The FOIPP Act does not distinguish between living and deceased individuals, therefore the same rules apply to the dead as to the living as long as they are identifiable individuals. The Commissioner has distinguished between living and dead individuals. Both have privacy rights, but the rights of the latter diminish over time. Disclosure of “tombstone” information or information that is published in an obituary is probably not an unreasonable invasion of a third party’s personal privacy. With regards to specific information about the deceased the purchase of the plot, its location, the cost, date of purchase and the name of the purchaser are details of transaction between the municipality (cemetery) and the purchaser. These details are similar to the purchase of a licence or other benefit as envisaged in section 22 (4) (i), disclosure of which is not an unreasonable invasion of privacy. The name of the individual interred, date of death and date of internment are usually part of the obituaries found in the local paper and such disclosure should not constitute an unreasonable invasion of privacy. Local governments should be aware that cemetery records are used for identity theft purposes and exercise caution when making cemetery information available, particularly over the internet.

Contracts of Public Officials

If a public body receives a request for the contract of a public official and the contract contains a provision of a percent increase on base salary based on performance must the public body release this information?

Yes, the public body would release the contract including the percent provision. Only the gross salary of an individual would be released. Since this includes many items, the release of the percent escalator does not release any specific information on performance. When the gross annual salary is released, the list of items included in it would include the percent escalator without specific dollars attached.

Contract Information – Releasing to Canada Revenue Agency

Can full details of a contract including personal information be disclosed to the Canada Revenue Agency (CRA) for the purpose of tax evasion investigations?

Yes. Section 33.1 (1) (c) would permit a local public body to disclose the personal information to the CRA if the legislation under which the CRA operates provides for the authority to collect such information. However, in order for a public body to exercise its discretion to disclose this information, the CRA must provide the specific authority under which it is requesting the information. Section 33.2 (i) may also apply to a request of this nature from the CRA. Such requests should be in writing on CRA letterhead.

Employee Files - Access by Elected Officials

Would a councillor or other elected official normally have access to personnel files of a local government?

No, normally elected officials should not have access to personnel files unless they have the written consent of the employee, or in circumstances where the elected official is acting on behalf of the local government the information is necessary for the performance of the duties of the officer, employee or minister.

Section 33 (Disclosure of personal information), lists the only circumstances under which a public body may disclose personal information. While it would be unlikely to occur, there may be an occasion where in the context of a specific committee duty, an elected official may require such access to an employee's information. This access could be given in accordance with section 33.2 (c) or (d).

Although a Chair of a Regional District has the authority under Section 218 of the *Local Government Act* "to inspect and direct the conduct of officers and employees," the principal appointed officers are normally delegated this responsibility for all staff but themselves. A municipal Mayor has less specific or direct authority. Under Section 116 of the *Community Charter* a Mayor may "provide, on behalf of council, general direction to municipal officers respecting implementation of municipal policies, programs and other directions of the council". Employees are not included within the scope of this authority.

Employee Information - Requests from Lawyers and ICBC for Access

How should a public body respond to a request for information on an employee's wage loss as a result of a motor vehicle accident from (1) a lawyer, and (2) from ICBC?

If a lawyer indicates in writing that he is acting on behalf of the employee, the public body may disclose this information to the lawyer if the public body obtains written proof of the lawyer's authority to act for the employee. This request is treated as a formal request under the Act.

If a lawyer is acting on behalf of a client, no separate written consent of the employee is required for disclosure. A public body must however satisfy itself that the lawyer is actually acting on behalf of a client, whether by means of copy of an undertaking that the solicitor is acting for the client, or by a letter from the client stating so. Such a letter would not be a written consent; it is a letter indicating the lawyer's right to act on behalf of a specific client. If the request were from an accountant or other type of professional other than a lawyer, written consent of the employee specifying the information to which the consent applies would be required.

Section 33 provides discretion to the public body to release personal information. In the case of ICBC, the corporation may provide the public body with the written consent of the employee, identifying the personal information to be released, and the public body could release the information under section 33.1(b). If legislation authorizes ICBC to collect the information, then the public body may disclose it to them under section 33.1(1)(c) without the consent of the employee. The public body should obtain the specific legislative authority from the body requesting disclosure prior to releasing any

personal information. Any requests for personal information from ICBC should be in writing on ICBC letterhead.

Employee Insurance Claims Against Local Government

Could an employee's own personal information be withheld by a public body under section 17 in cases where the employee has made an insurance claim against the local government?

Yes. Although individuals generally have a right to information about themselves, in limited circumstances, such information may be withheld under various exceptions such as section 14, 17, 19.

A local public body may refuse to disclose information that would have an adverse impact on an insurance claim against the local government. For example, under section 17 (Disclosure harmful to the financial or economic interests of a public body), a public body could refuse to release personal information to a claimant that would be harmful to the economic position of the local government during the resolution of an insurance claim. Section 17 is a harm-based exception, and a public body must be able to demonstrate harm to the financial or economic interests of the public body.

Employee Salaries and Benefits

What must a public body release in responding to a request in writing for the actual salaries of employees?

Section 22(4)(e) states that it is not an unreasonable invasion of personal privacy to release information on an employee's position, functions or remuneration as an officer, employee or member of a public body. The description of the functions, the position title, a generic list of the benefit package attached to that position, and the gross salary could all be released.

In providing the gross salary you should provide a list of what the gross salary includes, e.g. overtime, vacation entitlements, benefits. You would not provide an individual breakdown of the components of gross salary or individual benefit selections, since this would reveal the personal choices of employees, e.g. income tax deduction category, benefits selections. The information would be withheld under section 22(3)(f).

Employment Insurance Commission – Requests for Employee Records

A representative from the Federal Employment Insurance Commission requests access to all the information on the dismissal of an employee. Does the public body have to provide access to all such information?

Such requests should be in writing on EIC letterhead or if the request is made in person, ID should be provided. Section 33 does not require a public body to disclose personal information; it permits a public body to disclose personal information. On receipt of a request for access to records of dismissed employees, the public body exercises its discretion in disclosing the records. Section 33.1 (1) (c) permits a public body to disclose the requested records to the Employment Insurance Commission because the *Employment Insurance Act* provides authority for the collection of personal information for administration of the *Employment Insurance Act*.

The requirement of the requesters may be met by disclosing only some of the information in a record. The public body should clarify with the requesters what information they are seeking and determine if disclosure of specific records would meet their needs, rather than disclosing the entire file. Section 33.1 (1) (c) will permit the public body to disclose only the information of the individual requested, not the personal information of a third party which may also be in the dismissal records.

Individual's Own Personal Information

Will a request in writing for an individual's own personal information always be a formal request under the Act?

Requests in writing by individuals for their personal information will almost always be a formal request under the Act. Requests by individuals for their own personal information cannot be categorized as a routine release as an individual's file must be reviewed to determine if it contains any 3rd party information subject to severance under section 22(1) or if release of the information may result in harm (section 19).

A public body may have organized its files containing personal information in such a manner that individuals' personnel files will contain only personal information on themselves, with no information which a public body would be required to withhold, e.g. confidential references under section 22(3) or third party personal information. If this is the case, the public body can establish a process to provide individuals with access to their own personnel files without having to submit a formal FOI request.

Internal Memos Containing Personal Information

Will internal memos that contain recommendations and refer to an individual by name be available to that individual?

Normally, information specific to an individual will be available to that individual. However, there are some circumstances where information may not be available to that individual, or not be available for a specific period of time. The exceptions under which an individual's information could be withheld are section 12(3), 13(1), 14, 17(1)(c), 19(1) and (2) or 22(3)(h).

Section 12(3) may apply where an internal memo would reveal the substance of in-camera deliberations. Under section 13(1) information that reveals advice or recommendations can be withheld; this does not include purely factual information. Under section 14, a legal opinion about an individual and any communication between lawyer and the client may be withheld. Under section 17(1)(c) memos that are included in plans related to the management of personnel, or the administration of a public body which have not yet been approved by Council or made public could be withheld.

Section 19(1) or (2) may apply where the personal information could reasonably be expected to result in harm to the applicant's safety or health.

Circumstances may also arise where individuals have been requested to provide, in confidence, his/her evaluation of another individual. Under section 22(3)(h), it would be an unreasonable invasion of the third party's personal privacy for the public body to release a severed copy of the evaluation if it could identify the third party. In this case a summary of the information could be prepared and provided to the applicant if it would not identify the third party who supplied the information.

Library Records - Access by Parents to Children's Records

Do parents have access to the library records of their children?

If the children have their own library cards, parents do not generally have access to the borrowing records. If parents are responsible for paying fines or for lost books, a public body may disclose such records under section 33.1 (1) (i) of the Act. Parents who wish to monitor their children's borrowing activity have the discretion to refuse to give approval for a separate library card for their children, so that any borrowing activity will be done on the parents' card.

See also the FOIPP Act Regulation, section 3.

Reference Checks

Can an employer contact anyone they want for a reference check without consent from the employee or job applicant?

If the employer is a public body, section 27(1)(a)(i) requires that they obtain the consent of the employee or job applicant to collect information from another party.

Once the public body collects the information, it may only be used to determine the individual's suitability for a position with the public body or a reason consistent with this purpose.

Resumes - Unsolicited

How long should unsolicited resumes be kept?

Under section 31 of the FOIPP Act, if a public body uses an individual's personal information in making a decision that directly affects the individuals, the public body must retain the information for at least one year after its use.

A key factor will be whether the application form or letter (whether solicited or unsolicited) was used in consideration of a decision regarding hiring. Unsolicited applications or resumes that come from candidates must be kept for a year if they were considered in the process of a personnel search. If a public body has a practice of never considering unsolicited resumes when they are looking for staff, the requirement under FOIPP to keep the resumes and applications for one year would not apply.

Severance Documents - Access to

If a severance document indicates that the Employer/Employee will not release information and the Employer is forced to do so under FOIPP, can the previous employee sue?

Section 73 of the Act provides that a public body is protected from legal proceedings under the *Freedom of Information and Protection of Privacy Act* for disclosure in good faith under the Act. However, this would not prevent a lawyer attempting to prove that the employer wasn't acting in good faith. Therefore, it is preferable that your severance agreements state that information will be released if required by law. This puts the employee on notice that the information may have to be released through the FOI process.

The gross amount of the severance, together with the generic basis for calculating the amount of severance can be disclosed by the public body under section 22(4)(e) of the Act even if the document indicates that this information will not be released. The actual breakdown of the settlement would not be disclosed as it may be based on personal choices or other personal information (e.g. age, employment history, dependents).

The Information and Privacy Commissioner has ruled that for the purposes of section 22(4)(e) of the FOI Act, "remuneration" does include severance agreements. Please note, however, that under the *Financial Information Regulation*, the definition "remuneration" excludes severance agreements. Therefore, the statement of financial

information published annually under the *Financial Information Act* will not contain the amount of severance agreements.

Storage of and Access to Personal Information – Outside of Canada

What restrictions are there to providing access to personal information of British Columbians to jurisdictions outside of Canada?

Changes to the FOIPP Act in October 2004 placed restrictions on the storage of personal information outside of Canada and provisions of access, including viewing, to personal information from anyone located outside of Canada. It is essential for local governments to review their existing practices including agreements with service providers to ensure that any personal information collected and held by the local governments remains in Canada.

Telephone Inquiries About Employees

Can an institution confirm, in response to a telephone inquiry, whether an individual is employed with the institution and their specific salary?

Section 33 lists the only circumstances under which a public body may disclose personal information. To "disclose" personal information means to release, transmit, tell, or give personal information by any means, e.g. verbally, on paper or by computer.

In the most recent amendments to the FOIPP Act, the definition of "personal information" was amended to exclude "contact information". Contact information is defined as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual". Therefore, this information may be routinely released. In fact, many public bodies post employee lists on their websites. Employees may request that this information not be provided under section 19, if they feel their personal security is at risk.

As for salary, it is correct that this would not be disclosed over the phone. It would only be disclosed pursuant to an FOI request, as per s.22(4)(e). It is not an unreasonable invasion of an employee's personal privacy to release this information in response to an FOI access request if they are an officer or employee of the public body.

Training – Costs and Numbers

If a member of the public made a request for the number of employees that were trained and what it cost to provide training, would a local government have to provide it?

Yes, a public body would have to provide access to training records as long as the records do not identify particular employees.

If such information is not available in a summary format, a public body is not required to create a record under the Act, unless doing so would not unreasonably interfere with the operations of the public body. A public body may wish to consider making such disclosures routine if there is a demonstrated interest in the information.

Union Access to Employee Information

Can a union agreement provide for union access to employee's information without consent?

A union agreement may include a provision for limited access to employee information. Section 33.1 (1) (d) provides that a public body may disclose personal information to comply with an agreement made under an enactment of B.C. The agreement must contain specific reference to the information the union may access. The type of information contained in the agreement would normally only be information necessary to carry out union functions (e.g. name, gender, payroll information). Under section 33.1(1)(b) a public body could provide additional personal information not specified in the agreement with the consent of the employee to such a disclosure.

What personal information on an employee can be provided to a union or other bargaining agent and under what section of the Act would this occur?

Section 33.2 (h) provides for disclosure of personal information to a representative of a bargaining agent. As a rule, a bargaining agent has no special rights to receive information, except where these rights are set out in the collective agreement or where an employee has provided written authorization to a representative of the bargaining agent to make inquiries on their behalf. The agent may receive only the personal information that is specifically authorized in the collective agreement and/or the written consent of the employee.

As an exception, bargaining agents do have the authority to access employees' names and home addresses without the employees' written consent. In two recent decisions -- the *P. Sun Enterprises* and *Hudson's Bay* decisions -- the Labour Relations Board (LRB) decided that s. 6(1) of the *Labour Relations Code* (which outlaws unfair labour practices) requires employers to release this information to their unions. Therefore, pursuant to s.33.1(1)(c), public bodies are required, upon request, to provide their unions with the names and home addresses of employees. Other employee personal information is still considered confidential.

WCB - Release of Records to WCB

If a public body is provided with an employee's consent to release employment records to WCB, should third party information be severed?

Any requests for personal information from WCB should be in writing on WCB letterhead.

The public body must consider the records. Section 33 permits the public body to release the employee's records when consent is provided; however, the employee cannot consent to the release of other parties' information that may be contained in the records.

If a file contains personal information on third parties, unless there is a provision of section 33 that would permit a public body to disclose the third parties' personal information, it must withhold this information when it releases the employee's records to WCB. Note that this situation is different than if a public body receives a subpoena for an employee's records. In the case of a subpoena no information will be withheld when the record is released to WCB under section 33.2 (b).

Administration of the Freedom of Information and Protection of Privacy Act

Creation of a Record from a Database

Is a local government required to create a record in a different form than that which the public body currently has it? i.e. information contained in several databases rather than as one record in order to respond to an FOI request?

Yes in some circumstances. Section 6(2) of the Act requires a public body to create a record when they can readily do so using existing hardware and software, and technical expertise. This requirement to create a record is further limited by the provision that the creation of the existing records would unreasonably interfere with the operations of the public body. It is not intended to provide information that is not already recorded in one or more records.

Creation of a Record from a Geographic Information System (GIS)

Is a local government compelled under FOI to produce information from a GIS system in a hard copy or digital format?

Yes and No. Section 6(2)(a) states that a public body must create a record for an applicant if the record can be created using existing hardware, software, and technical expertise. If an applicant requests a record in digital format on a floppy disk or CD-ROM, public bodies must provide it in this format if it is technically feasible to do so (see Order 03-16). The requirement to create a record however, is limited by section 6(2)(b) which removes the requirement if creating a record would unreasonably interfere with the operations of the public body.

The purpose of a GIS is to create records from a large and varied database for use in municipal operations. If a local government has sufficient resources to create a record of information from its GIS without interfering with its operations, then it must create the record. In creating the record they must make every reasonable effort to ensure that no personal information is included in the record for release. For guidance on aggregation standards refer to Statistics Canada guidelines. Since a public body may be compelled to create the record if a request is made, it may wish to consider creating these records as a routine service of the local government, making them available for a fee.

It is important to note that the *FOIPP Act* does not allow public bodies to charge fees for the time spent severing information from a record, no matter how large the record may be. Databases should be specifically designed so that information that will need to be severed is segregated into defined fields that can be removed easily.

Definitions

Under the definition of "local government body" does section (n) mean that the range of advisory committees appointed by Council are in fact separate public bodies? Will each require a separate head to be appointed?

Yes, section (n) means that all committees, boards, commissions created or owned by a local government body (or jointly with other local governments), are separate public bodies under the Act, if all members or officers are appointed/chosen by or under the authority of a local public body.

Each committee, board, etc., must therefore appoint a head for the purposes of the Act. An individual appointed as head for the local government body may also be appointed as the head for each of the committees. A separate resolution must be adopted by each committee appointing the head for the local government or regional district as head for the committee. Boards and committees may also appoint their own heads, if circumstances warrant. In practice, many of the records created by such bodies are also contained within the records of the local government.

Destruction of Records

If records have been sent for destruction but not yet destroyed when an access request is received, does the public body have to include such records in the request process?

Yes. When a request for records is received, all records requested are frozen and no further actions may be taken to destroy the requested records if they have been designated for destruction.

An FOI request for records includes all records that have not been destroyed at the time the request was received. Records can include E-mail records that have not yet been deleted from your E-mail system, and records that have been designated and sent for destruction in accordance with a retention and disposal schedule, but not yet destroyed.

Fees

Is a local government body allowed to set its own fee schedule for records requested under the Act?

Section 77(c) permits a local public body, by bylaw or other legal instrument, to set its own schedule for the fees that may apply.

A local public body may charge fees only for the categories of services listed in subsection 75(1). These services are (a) locating, retrieving and producing the records (no fee may be charged for the first three hours spent locating and retrieving a record); (b) preparing the record for disclosure; (c) shipping and handling the records; and (d) providing a copy of the record. A local government cannot create new categories for which fees can be charged related to FOI requests.

If a local public body does not set its own fee schedule under section 77, it is bound by the fee schedule set out in section 7 of the Regulations. A local public body that decides to set its own fee schedule should be guided by the maximums listed in section 7 of the Regulation and keep in mind that any fees set must meet the test of reasonableness. The fee provisions of the Act do not apply to charges for information released routinely. Public bodies may set reasonable fees for access to general information released through routine channels.

Commercial applicants, who are defined in the Regulations as “a person who makes a request for access to a record to obtain information for use in connection with a trade, business, profession or other venture for profit” can be charged the actual cost of providing the service.

FOI Applicants

Do FOI applicants have to provide their name, phone number, address or other contact information when making a request?

No, the Act does not require an applicant to provide their name, phone number, address or other contact information when making a request. However, it may be difficult to process such a request, if contact is required to clarify specific matters during processing. Some applicants may not wish to provide this information, and will instead advise when they will pick up the records they have requested. A public body will need to ensure that the applicant is aware of why contact information is required, and that their identity will only be provided to others on a "need to know" basis to complete the request.

Monthly listings of FOI Requests

Is it appropriate to circulate monthly listings of FOI requests including the name of the requester to elected representatives and internal departments?

No, it is not appropriate to circulate the names of requesters on such a list. The principle of "need to know" applies to such disclosures. The name of an individual requester is the personal information of the requester. The Act restricts the disclosures of personal information by a public body to those circumstances set out in section 33. If it is necessary to provide the name of a requester to an officer or employee of the public body to process the request it could be disclosed under section 33.2 (c) or (d). If the requester were a business and not an individual it could be disclosed since businesses do not have personal privacy rights. However, as a general rule this practice is not recommended.

For informational purposes within the public body, a list indicating the number of requests, type (personal/general information), and whether they are from (a) an individual (b) media (c) business would be appropriate. A description of the request could also be provided if it did not identify the individual requester.

Requests for Additional Copies of Records

Can access to a record be denied under the Act because the requester already has a copy of the requested record?

No, access cannot be denied on the basis that an applicant already has a copy. The Act provides a general right of access, and there is no provision in the Act to refuse a request for access on the basis that the requester already has a copy of the record. In the event that such requests become systematic and repetitious, or frivolous or vexatious, legitimately interfering with the operations of a public body, the public body may apply to the Information and Privacy Commissioner under section 43 (Power to disregard requests) for permission to disregard them.

Rules of Court - Discovery Process

What does a public body have to release in accordance with the Discovery process?

In accordance with section 3(2) (Scope), the Act does not limit information available by law to a party in a proceeding.

The normal process applies when a public body is served with a Demand for Discovery of the documents. Your legal representative will direct you in preparing for discovery and in determining what records to release.

A lawyer may choose to file an FOI request for records either in advance of the discovery process or following the discovery process as an additional check to make sure that they have received all the records on a particular matter.

Section 25 – Information must be disclosed if in the public interest

Under Section 25, when should information be disclosed in the public interest?

A public body should apply section 25 when information comes to its attention, which shows a real and significant risk of harm to the environment, or the health or safety of the public or a group of people, or when it is clearly in the public interest.

The fact that a risk could exist is not sufficient to apply section 25. There must be a real risk, and expert advice may be needed to establish if there is a real risk. The inclusion of the word "significant" ensures that the head makes a determination of the degree of harm that would result. Application of section 25 to such things as a route designated from regular transportation of dangerous goods is not the type of situation contemplated by section 25.

Section 25 would apply in situations such as a chemical spill or the presence of a contaminant in the drinking water supply. Both of these would pose a risk of significant harm to health and safety. The accidental release of a toxic substance into a specific area of the environment that could affect fish or wildlife would pose a risk of significant harm to that environment.

It is not expected that section 25 would be applied to the routine identification of potential risks such as those detailed for disaster planning. For disclosures "clearly" in the public interest under section 25, clearly is defined as "visible, unmistakable...beyond a question or beyond a reasonable doubt", etc. according to Black's law dictionary. For disclosure in the public interest section 25 there is an onus on the public body to disclose information only if there is no reasonable doubt that the public interest requires disclosure. To determine whether something is in the public interest an assessment must be made of the public interest in disclosure versus the public interest in non-disclosure.

Local government bodies are encouraged to seek the advice of, or consult with the police about how to act with respect to known offenders in the community who pose a risk to public health and safety. The Ministry of Attorney General has developed a notification policy that has been made available to municipal police forces. This policy

gives some guidance on how to balance the competing interests that must take place in such sensitive matters.

Section 27 - Freedom of Information and Protection of Privacy Act

Is there a procedure established for obtaining authorization from the Commissioner under section 27(1)(a)(ii) and if so, what is it?

Section 27 establishes how a public body may collect personal information. A public body which needs to collect personal information from someone other than the individual the information is about must make a written submission to the Information and Privacy Commissioner. This submission must include appropriate documentation to justify the indirect collection of personal information.

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