



Heenan Blaikie

**Summary Overview of the Implications of the *Freedom of Information and Protection of Privacy Act* for the University Sector**

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Priscilla Platt  
Heenan Blaikie LLP

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# FIPPA Principles

The Act is predicated on two key principles:

## 1) Transparency

- Information (records) should be made available to the public

## 2) Privacy

- Fundamental protection of personal information

- Both principles are of equal weight; one is not subservient to the other.
- Adherence to key principles is effected through independent oversight.

# Values

- **Access to information, openness and accountability are essential in a free and democratic society.**
- **Protection and respect of privacy is also essential in a free and democratic society, as it is integral to the dignity and integrity of the individual.**

# Environmental Scan

- **General trend extending public sector legislation to “broader public sector”.**
- **Several other provinces in Canada apply similar legislation to universities, including Newfoundland, Nova Scotia, Quebec, Manitoba, Alberta, and British Columbia.**
- **Universities in England, New Zealand and Australia are also covered by similar legislation.**

## Application of the Act

- The Act applies to “records”, broadly defined.
- It applies to any records held by universities as of June 10, 2006.
- ‘Held’ = in the custody or under the control of the university.
- No grandparenting clause/no transitional provisions.
- Act applies to the ‘university’ as a single entity.

# Exclusions

- **Certain records are generally excluded from the whole Act, both access and privacy. Exclusions include:**
  - research and teaching materials
  - labour relations and employment related information
  - records that are not in the custody or under the control of an institution
  - private archival records
- **Most exclusions have exceptions.**

# Access to Information: Exemptions

There are limited and specific exemptions from obligation to disclose, including for:

- closed meetings
- solicitor-client records
- economic and other interests of the institution
- third party information
- advice and recommendations
- danger to safety or health
- publicly available records
- relations with governments
- terrorism
- law enforcement

## Access to Information: Exemptions (cont'd)

- Many of the exemptions are subject to the 'compelling public interest override' in section 23.
- **Implications for universities:**
  - Exemptions apply narrowly
  - Pro-active dissemination is the most effective approach to manage the process
  - Sensitive information of universities and (potentially) university stakeholders will be disclosed
  - No exemption for embarrassment!

# Access to Information: Oversight

- In an appeal, the IPC has binding order making power, subject only to judicial review.
- In judicial review, university will be bound by manner in which access request has been processed, including written responses to requester, exceptions claimed and submissions made to IPC in an appeal.
- Legal consistency within university and across the university sector is key.
- Appeal process is resource/time intensive.

# Privacy Protection

What is 'Privacy'?

## Privacy Protection (cont'd)

### *Definition of 'Personal Information'*

- **broad**
- **any recorded information about an identifiable individual**

## Privacy Protection (cont'd)

- The Act contains rules for the collection, use, disclosure, security and disposal of personal information.
  - Fair information practices
- The privacy rules do not apply to personal information that is “maintained for the purpose of creating a record that is available to the general public”.

# Privacy Protection (cont'd)

## *Collection of Personal Information*

### Only where:

- 'necessary to the property administration of a lawfully authorized activity';
- expressly authorized by statute; or
- used for the purposes of law enforcement.

# Privacy Protection (cont'd)

## *Direct and Indirect Collection*

- **direct collection preferred**
- **may collect indirectly where there is:**
  - consent;
  - to determine suitability for an award or honour;
  - for the purpose of litigation;
  - for the purpose of law enforcement, etc.

# Privacy Protection (cont'd)

## *Notice*

- **Notice is very significant because a proper notice may authorize the use and disclosure of personal information, even without consent.**
- **Notice requires that the individual be advised of three things:**
  1. the legal authority for the collection;
  2. the principle purposes for which the personal information is intended to be used; and
  3. the title, business address and business telephone number of a public official who can answer the individual's questions about the collection.
- **Some exceptions:**
  1. for law enforcement related records, and
  2. where the responsible minister has waived the notice.

## Privacy Protection (cont'd)

### *Use*

- for the purpose for which the personal information was obtained or for a consistent purpose
- with consent
- alumni information for fundraising

## Privacy Protection (cont'd)

### *Disclosure*

- For the purpose for which it was obtained or for a consistent purpose
- with consent
- alumni information for fundraising

## Privacy Protection (cont'd)

### *Retention*

- regulation requiring a minimum of one year, absent consent to a shorter period

## Privacy Protection (cont'd)

### *Disposal and Security*

- reasonable measures to protect information
- confidential disposal
- resource implications to ensure physical, technical and administrative safeguards implementation
- breach of security could lead to adverse public relations, risk of censure from the Commissioner and possible civil proceedings

## Privacy Protection (cont'd)

- **Personal information may only be shared within the university where it is “necessary and proper to do so” and it is an offence to willfully disclose personal information in contravention of the Act.**
- **Statutory right for individuals to request access to their own personal information held by the university.**
- **Statutory right for individuals to request a correction of a record of their own personal information.**
- **New rules for dealing with personal information of alumni for fundraising purposes.**

# Privacy Protection: Oversight

- **The Commissioner accepts complaints from the public, engages in investigations of those complaints and issues reports containing recommendations.**
- **Legal consistency in the university sector recommended.**
- **Privacy investigations are typically resource / time intensive.**
- **Privacy breach protocol – what to do when a breach occurs.**

# Implications of FIPPA

## *Implications for university registrars*

- **Implementation of FIPPA governance processes.**
  - Management of information life cycle
- **Compliance review/preparation of policies, practices and procedures.**
- **Training, training, training.**

# Access to Information and Privacy Group

## Heenan Blaikie LLP

200 Bay Street Suite 2600  
Royal Bank Plaza, South Tower  
Toronto, ON – M5J 2J4

Contact: **Priscilla Platt**  
Tel: 416-360-3520  
e-mail: [pplatt@heenan.ca](mailto:pplatt@heenan.ca)