

# FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY (FOIP)

## Background

The Freedom of Information and Protection Privacy Act, RSA 2000, c. F-25 (FOIP), applies to all school boards, including the Division. The Division is deemed to be a “public body” (it falls within the “local public body” category) and is therefore subject to many responsibilities under FOIP.

The legislation creates two broad *competing* obligations on local public bodies.

- The first obligation is a right of access to records which are in the custody and control of the Division. The obligation is owed to an “applicant” who begins the process by requesting records as provided under this first obligation and is limited by the second obligation.
- The second obligation is the right to privacy. This obligation imposes limits on the Division’s ability to collect, use, and disclose information (including personally identifying information and confidential third party information) and it creates mandatory and optional restrictions on disclosure of information.

The Division will manage information in a manner that supports a commitment to providing access, subject to specific limitations under FOIP, while fulfilling its obligations to safeguard the confidentiality of personal information in its records and to protect personal information and specified confidential information from unauthorized access, collection, use, disclosure, and destruction.

In keeping with our desire to be open and transparent with the public, Battle River School Division routinely discloses the Division education plans, budget, audited financial statements, minutes of public Board meetings, policies, and Division achievement and diploma results. These and other documents concerning Division operations are made publicly available on our website.

## Definitions

***Division FOIP Coordinator:*** The Communications Officer, as FOIP Coordinator, is responsible for ensuring that the Division complies with all provisions of the Act and for establishing procedures and practices to ensure appropriate implementation and management of this legislation.

***Principal (School Site FOIP Coordinator):*** The Principal of each school shall be the school site coordinator for the purposes of the FOIP Act. Site Coordinators are responsible to ensure the protection of personal information at their schools and direct inquiries about disclosure of information to the Division FOIP Coordinator.

***Access:*** is a person’s ability to view or copy records.

***Formal FOIP Request:*** is an official request made for information which is not available by other means, under the FOIP Act and accompanied by the initial fee if required.

***3<sup>rd</sup> Party Protected Information:*** Information that would reveal third party trade secrets, commercial information, financial information, labour information, scientific information If that information was supplied in confidence and where the disclosure could lead to the harms identified in section 16(1)(c) of FOIP.

**Personal Information:** Section 1(n) of the Act - recorded information about an identifiable individual, including:

- An individual's name, home or business address, or home or business telephone number,
- The individual's race, national or ethnic origin, colour or religious or political beliefs or associations,
- The individual's finger prints, other biometric information, blood type, genetic information or inheritable characteristics,
- Information about the individual's health and health care history, including information about a physical or mental disability,
- Information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,
- Anyone else's opinions about the individual, and
- The individual's personal views or opinions, except if they are about someone else.

**Privacy Breach:** occurs when personal information is collected, retained, used or disclosed in contravention of the provisions of the FOIP Act. Privacy breaches also encompass the theft, loss or loss of control of personal information.

**Record:** A record is information in any form and can include notes, images, audiovisual recordings, emails, text messages, drawings, photographs and any other information that is written, photographed, recorded or stored in any manner.

**Superintendent:** Refers to the Superintendent of Schools and includes, where applicable, a person acting as Superintendent of Schools during the absence of the Superintendent.

## Procedures

1. The Superintendent has been delegated to carry out all functions of the Board of Trustees which may be lawfully delegated pursuant to the *Education Act*, SA 2012, E. 0.3, s. 52). Pursuant to this AP, and pursuant to s. 95(a) of FOIP, the Superintendent is designated as head of the public body.
2. The Communications Officer has been designated as the FOIP Coordinator and is responsible for day-to-day management of requests made under FOIP and, in particular:
  - 2.1. The FOIP Coordinator must educate Division employees about how to collect, use and disclose personal information in accordance with the FOIP Act;
  - 2.2. The FOIP Coordinator must assess, assist applicants, facilitate collection of documents, and otherwise respond to requests to obtain access to a Division record under Part 1 of FOIP to the extent required under FOIP except where the Superintendent undertakes to do so;
  - 2.3. The FOIP Coordinator must require each applicant to pay the Division fees for services as provided for in the regulations under the FOIP Act unless the applicant is excused from paying all or part of a fee for services under section 93 of the FOIP Act;
  - 2.4. After receiving a report about an actual or suspected privacy breach of FOIP by the Division or a Division employee, the FOIP Coordinator must:
    - 2.4.1. report the breach to the Superintendent;
    - 2.4.2. report the breach to the Office of the Information and Privacy Commissioner if applicable; and
    - 2.4.3. report the breach to any person(s) who's personal information was affected.

3. Any Division employee who collects, uses and/or discloses personal information or 3<sup>rd</sup> Party Protected Information must ensure they do so in accordance with the FOIP Act.
  - 3.1. No Division employee other than the FOIP Coordinator or Superintendent may respond to a formal FOIP request to obtain access to a Division record under Part 1 of the FOIP Act;
  - 3.2. If a Division employee other than the FOIP Coordinator receives a formal request to obtain access to a Division record under Part 1 of the FOIP Act, then the Division employee must forward the request to the FOIP Coordinator immediately;
  - 3.3. Each Division employee must report any actual or suspected privacy breach of FOIP by a Division employee, whether intentional or not, to the FOIP Coordinator immediately;
    - 3.3.1. No Division employee may take any adverse employment action against a Division employee only because the Division employee, acting in good faith, reported an actual or suspected breach of FOIP by another Division employee to the FOIP Coordinator;
  - 3.4. Division employees must protect all information while in their custody and control, ensuring risk of unauthorized disclosure of personal or other confidential information is minimized;
  - 3.5. If a Division employee needs to collect personal information, they must make sure they have the authority to collect the personal information requested;
    - 3.5.1. A Division employee is required to ensure that personal information collected is used in a way that is consistent with the original purpose of collection. Otherwise they are required to consult with the FOIP Coordinator to ensure compliance with FOIP for use of personal information;
  - 3.6. Division employees can share personal information only with individuals or organizations outside of the Division that have the right of access or where consent has been provided by the individual about whom the information applies (where uncertain);
    - 3.6.1. If a Division employee is unsure whether or not they can share information, they must contact the FOIP Coordinator;
  - 3.7. Each Division employee who contravenes the FOIP Act or this Administrative Procedure may be subject to disciplinary action up to and including termination of employment with the Division.
4. No personal information will be collected unless its collection is specifically authorized by provincial legislation or is necessary for an operating program or activity of the Division. This includes the collection of personal information necessary for employment.
5. The Division may use or disclose personal information only for the purpose for which it was collected or complied, or for a use consistent with that purpose, or if the individuals the information is about has identified the information and consented to its use, or for the purpose referred to in sections 40 or 41 of FOIP.
6. The Division has a duty to maintain accurate and complete personal information when that information is used to make decisions about the individual. FOIP permits an individual to correct an error or omission that has been made on their personal information.
7. How to process a Request for Access to Information:
  - 7.1. To submit a formal FOIP request, an applicant must contact the Division's FOIP Coordinator and submit a request for a record (or records) using the Division's application form.

- 7.2. An initial application fee (indicated on the form) is required for all general information requests. At the discretion of the Division, additional fees may be levied in accordance with Schedule 2 of the FOIP Regulation. The rates adopted by the Government of Alberta shall be used by the Division. The FOIP Coordinator may require payment, or agreement to pay, from the applicant.
- 7.3 The applicant must, in submitting the application form:
  - 7.3.1. identify the record requested of the Division; and,
  - 7.3.2. provide the FOIP Coordinator with sufficient detail to allow for its identification.
- 7.4 The FOIP Coordinator is entitled to seek additional information from the applicant necessary to understand and/or process the application request.
- 7.5 Where an applicant fails to respond to the FOIP Coordinator's request for a fee, or fails to respond to the FOIP Coordinator's request for additional information, for a period of 20 days after the applicant has received the request, then the FOIP Coordinator is entitled to consider the request abandoned.
- 7.6 Upon receiving an appropriate request, the FOIP Coordinator shall coordinate the Division's response to the request, including by directing staff to locate and copy applicable record(s), or by identifying a need to transfer the request to another public body under section 15 of FOIP.
- 7.7 Prior to disclosure of any record, the FOIP Coordinator shall determine whether or not the information is to be released under the terms of FOIP. In particular, the FOIP Coordinator must consider the exceptions to disclosure in Part 1, Division 2 of FOIP (sections 16-29). Where 3<sup>rd</sup> Party Protected Information is at issue, the FOIP Coordinator must also give written notice to the third party prior to disclosure under s. 30 of FOIP.
- 7.8 The FOIP Coordinator must respond within 30 days of receiving the applicant's request unless time limits are extended under section 14 of FOIP or unless the FOIP Coordinator transfers the request to another public body.
- 7.9 The FOIP Coordinator must assist applicants in the application process.

References: Education Act  
 Freedom of Information and Protection of Privacy Act  
 Freedom of Information and Protection of Privacy Regulation  
 FOIP Guidelines and Practices, Service Alberta Personal Information Protection and Electronic Documents Act

Related APs: Records Management (AP 142)  
 Student Records (AP 320)

Forms: FOIP – Request for Access to Information (181-1)