

POLICY FRAMEWORK

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY (FOIP)



OVERVIEW OF LEGISLATION

As of October 1, 1999, the *Freedom of Information and Protection of Privacy Act* establishes public right of access to records in the custody or under the control of Leduc County. It provides a formal request process for information that is not available through routine channels. Most requests for information should be satisfied through routine channels. A request under the legislation should be the avenue of last resort.

In determining what information should be routinely released, consideration should be given to whether the provisions of the Act dealing with a formal request under the legislation would result in the release of the information. If the information would be released in response to a formal request, as no exceptions apply to its disclosure, it should be considered for inclusion in the [Leduc County Routine Release of Information policy](#).

Records Covered by the Act

The *Freedom of Information and Protection of Privacy Act* (the Act) covers all records in the custody or under the control of Leduc County. The Act defines a record as recorded information in any form, including books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records. It includes electronic records, personal filing systems and items such as working papers and post-it notes. The definition is intended to cover all sorts of recorded information created in carrying out the operations and activities of Leduc County such as e-mail, voice-mail and personal handwritten notes of employees.

Physical possession of a record by the County normally constitutes custody. A record is under the control of Leduc County when the County has the authority to manage the record throughout its life cycle including restricting, regulating and administering its use or disclosure. This definition of "custody and control" is broader in that it also includes situations where the business records of a third party are stored on the premises of Leduc County and those stored off-site where the County has responsibility for the records.

Request Under the Act

The Act requires an applicant to make a request in writing. The request can be made in a letter or in any other written form and qualifies as a request as long as it mentions the legislation.

Provision is made in the Act for the acceptance of oral requests from those who are disabled, do not have the literacy capabilities or are otherwise unable to exercise their rights under regular procedures. In such cases, the request should be recorded in written form and sent to the applicant. They may have to use this document if they wish to appeal to the Information and Privacy Commissioner.

The legislation establishes a duty to make a reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely. Included in this duty is the requirement to help applicants be more specific about what they are requesting. This not only helps the applicant but also may cut down on the work that must be performed by Leduc County in responding to a request. There should be an effort to clarify requests that are unclear immediately upon receipt in the Freedom of Information and Protection of Privacy Coordinator's office. If it takes some time to clarify a request, the Act allows Leduc County to claim a time extension where the applicant does not give enough detail to enable the County to identify a requested record.

Timeframes under the Act

Once a formal request is received, Leduc County has **30 calendar - not working - days** to respond. Within this period, the requests must be reviewed, records found, records reviewed and either access provided or an initial response made to the applicant indicating an extension of time to respond to the request. There are limited grounds for extending the time for response for another 30 days, without seeking permission from the Information and Privacy Commissioner. If you can assist the public outside of the legislation, you can avoid these restrictive time frames.

Fees under the Act

The Act permits Leduc County, by bylaw, resolution or other legal instrument, to set its own schedule for the fees that may apply to requests under the legislation. Leduc County must comply with the fee schedule set out in the Act's Regulations and may not charge more than these maximum amounts. It should be noted that the County can not create new categories for which fees can be charged related to requests under the Act.

Furthermore, only photocopying charges apply to personal information (in excess of 40 pages) and fees may be waived if the records relate to a matter of public interest.

The fee provisions set out in 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. See [Leduc County Fees and Charges](#).

Leduc County may exercise its discretion and grant a fee waiver related to a request under the Act. In consideration of a request for a fee waiver the County should ask for a submission in writing from the applicant to support a request for a fee waiver. The expectation is that fees will be waived only in limited circumstances having regard to all the factors.

Release Exceptions

Although the Act establishes a “culture of openness,” it also provides specific exceptions to disclosure. There are mandatory exceptions, which require local public bodies not to release the information and discretionary exceptions, in which local public bodies decide whether or not to release the information based on the harm that might occur or the type of information involved. These exceptions are, however, fairly limited and have to be viewed narrowly.

Protection and Privacy of Personal Information

The legislation requires that personal information be safeguarded and only released to others in certain situations specified in the Act. That personal information is, however, almost always releasable to the person to whom the information is about. Likewise, there are strict rules related to the collection of personal information under the Act.

The Act regulates the specific purposes for which Leduc County may collect information. Essentially, the County collects information to provide services, and to provide complete and accurate documentation of the local government process so as to ensure a high standard of municipal services.

Severing Records

Many records contain both information that can be released and other information that should be excepted from access. Where information that falls with an exception can reasonably be severed from a record, the Act provides an applicant with a right of access to the remainder of the record.

POLICY

PROTECTING THE PRIVACY OF INDIVIDUALS

The Freedom of Information and Protection of Privacy Act regulates the specific purposes for which Leduc County may collect, use, and disclose personal information. This policy will form part of the FOIP Policy Guidelines referred to in Bylaw 43-99.

Employees are obligated to protect personal information by making reasonable security arrangements as outlined under section 38 of the Act. Security precautions are depending on the sensitivity and nature of the records, i.e. the more sensitive the information in the records, the stricter the security arrangements that are required. Security arrangements should be reviewed with the Records and Information Manager.

The goal is to keep personal information secure from unauthorized access, collection, use, disclosure or disposal. This includes Electronic systems, surveillance systems, and hardcopy files used to store and/or share personal information.

Collection of Personal Information:

The collection of personal information under the Act is addressed in section 33. The following principles are recommended for providing notice of collection of personal information:

- Notice of collection is provided in writing and meets the following requirements under Section 34(2).
 - the purpose for which the information is collected
 - the specific legal authority for the collection, and
 - how the information will be used
 - the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.
- Procedures are in place for staff to follow for the use, disclosure and disposal of personal information. If the circumstance arises in which the FOIP Coordinator has determined that notice of collection cannot be providing in writing, procedures are to be in place for staff to follow when providing oral notice.

Access of Personal Information:

Employees with access to information (in any form or medium) about County applicants/clients; employees or business matters may only obtain information that is necessary for job duties and performance. Viewing any information other than that required in performing a job function is a breach of the Leduc County's confidentiality standard, even if one keeps the information to oneself and does not disclose it to any other person.

Regardless of the format in which information is obtained (either orally, written or electronic) it must be treated with the same level of confidentiality. Every effort should be made to ensure that confidential information is not inadvertently disclosed to persons not otherwise entitled to receive such information. For example:

1. Confidential information should never be discussed in any area where others not entitled to receive that information are present. This includes:
 - in public areas of Leduc County such as elevators, washrooms, lounges, stairwells, or cafeteria facilities;
 - at home or in public places outside of Leduc County, unless required to do so by law or with permission from an authorized individual.
2. Confidential information should never be left unattended in written form on desks or displayed on computer terminals in locations where it may be seen by unauthorized persons (e.g. while transporting records or leaving information on photocopiers, facsimile machines, or white boards).
3. File cabinets and storage areas that contain confidential information should be kept locked when unattended and access should be restricted in rooms where personal records are stored.
4. Staff should limit using e-mail or facsimile transmissions to send personal information and make reasonable efforts to ensure that the recipient of such transmissions is verified.
5. Confidential information should be disposed of in accordance with Records Retention and Destruction Policies.

An oath of Office must be read, completed and signed at the time of hire/work commencement. This statement acknowledges that the individual has read this policy and understands the consequences of failing to comply.

ROUTINE RELEASE OF INFORMATION POLICY

PURPOSE:

Leduc County encourages the routine release of suitable administrative and operational records to create an efficient, cost-effective means of providing the public with greater access to information. Specifying records that will be available to the public without a request for access under the Freedom of Information and Protection of Privacy Act (FOIP) demonstrates the Leduc County is operating in the "spirit" of the Act.

The FOIP Act is in addition to, and does not replace, existing procedures and fee structures for access to routinely available information. When the request involves records that cannot be provided as a routine request, such as personal information about a third party, the person should be referred to the formal process under the FOIP Act.

DEFINITIONS:

Routine Disclosure: In response to a routine inquiry or request, occurs when access to a record can be granted without a request under the FOIP Act.

Active Dissemination: Occurs when information or records are periodically released, without any request, under a program or release strategy.¹

CRITERIA TO DESIGNATE A RECORD FOR ROUTINE RELEASE

The criteria used to determine which records could be classified for routine release is:

- A statutory requirement.
- Type of information is requested on a regular basis.
- Material that is publicly available.
- No FOIP Act exceptions apply to the records.

A yearly review of our records holdings and of the types of requests for information being made to Leduc County will be conducted to determine whether the request for information can be met in the future through either routine disclosure or active dissemination.

ROUTINE REQUEST PROCESS

When a written or verbal request is received for information that has been identified as routinely available, simply provide a response to the applicant and if applicable, apply the fees and charges schedule.

If the document states that the request is made under the FOIP Legislation;

- advise the applicant that the information they are seeking is available through routine channels (therefore does not require a request to be made under the Act), and
- explain that the request has been forwarded to the relevant department and the applicant will be contacted regarding the request;
- give the FOIP Coordinators name, address, and telephone number so the applicant can contact this individual directly if preferred; and
- copy the department, for information and follow-up action.

The purpose at this point is for Leduc County to simply re-direct the applicant to the relevant department to pursue their request through routine channels.

ACTIVE DISEMINATION OF RECORDS

The Internet will be used to regularly make available information, such as Approved Council Minutes and By-Laws. Other methods will include mail, faxes, newspaper and public reading room.

The Records Coordinator or designate will be accountable for ensuring the public reading room is up to date and that each document is reviewed and does not contain third party personal information or any other information that is set out in Division 2 of the FOIP Act.

The FOIP Coordinator will monitor these procedures for the to ensure effective release of the information.

¹ Alberta Municipal Affairs, FOIP Guidelines and Practices, September 2000.

RECORDS IDENTIFIED FOR ROUTINE RELEASE

* Records that will be actively disseminated:

Advertisements*	Job Descriptions
Advisory Committee Minutes - Approved*	Leases
Annual Report*	Leases of Properties
Area Structure Plan – Approved*	Listing of Development Permits
Arrears in taxes – by property	Municipal Development Plan – Final*
Assessment Roll – Inspection	News Release
Audit Statement	Organizational Charts with name & position
Award Recipients	Pay Grades for Employees
Benefits Package	Petitions (with names & addresses)
Budget Summary	Photos – Public Events
Budgets – Approved	Policies*
Building Statistics*	Program Information
Business Plan - Adopted*	Property Assessment Values
By-Laws - Passed*	Property Rolls without names
Committee Membership Lists	Property Searches
Compliance Certificate	Public Hearings
Council Minutes - Approved*	Publications
Convention/Seminar/Workshop	Retention of records – schedules
Expense Claim Form*	
Councillor Convention Recaps	Right-of-ways
Councillor Paysheet Form*	Salary of Elected Officials
Demographic Data – Statistical	Speeches – Presented
Development Statistics	Street and Road Naming
Disaster Plan	Tax Certificates by Legal Description
Easements	Tax Rate
Election Expenses	Tax Sale Notification
Election Results*	Tax Sale of Property
Employee Names	Utility Current Rates/Charges
Employee Newsletter	Volunteer List (names only)
Equipment Rates	
Expense Claim Form*	
Fire Hydrant Locations	
Inspection Reports – without name	
Insurance Policies	

RELEASE OF RECORDS

Release of Records

Any disclosure of personal information by public bodies must be in compliance with Part 2 of the Act. **For a listing of releasable records, please refer to the Routine Release of Information Policy.**

The legislation requires that personal information be safeguarded and only released to others in certain situations specified in the Act. That personal information is, however, almost always releasable to the person to whom the information is about.

Individual's Own Records

Individuals have a right to information about themselves, subject to limited and specific exceptions set out in the Act.

The exceptions are interpreted with a view to providing an individual as much access as possible to his or her own personal information.

The public body must, when providing disclosure of personal information:

- verify the identity of the person to whom the information is disclosed; and
- ensure that any person exercising the rights of an individual under section 84 of the Act provide appropriate written evidence of his or her right to exercise that individual's rights under the Act. (E.g. court order of guardianship AND authorization of the guardian.)

Requests in writing by individuals for their personal information will not always be formal requests under the Act. Requests by individuals for their own personal information cannot always be categorized as a routine release. To routinely release information means that the information could be released to anyone. Further, an individual's file may need to be reviewed to determine if it contains any third party information subject to severance or third party notice requirements and process it accordingly.

At the discretion of the Department Head, personal information can be released to a person if the record is solely regarding that person and the record or documents **do not** contain any other information or opinions regarding another individual. If the request is extensive (more than a few pages), is made citing the FOIP Act, or the information contains information or opinions regarding another individual or is a legal opinion, **the request it is to be forwarded to the Records and Information Manager.**

Authorized Access (Representatives)

The individual's own lawyer, acting on the individual's behalf, with signed authorization from the individual (not opposing lawyers, and not lawyers for other insurance companies) can access any information which the individual could access. The individual's lawyer stands in the individual's shoes. Therefore you could release to the individual's lawyer documents submitted by the individual to the County without severing of third party information provided by the individual.

Assessment Roll

Assessment rolls will continue to be open for public inspection. The Act provides that the County may disclose personal information for the purpose of complying with an enactment. In this case, assessment rolls are open for public inspection under the requirements of the *Municipal Government Act* (see section 307). The individual property files upon which the assessments and tax rolls are based would not, however, be routinely available.

Information in the assessment roll, if provided in bulk, must exclude the names and mailing addresses of individuals.

Building Plans

Certain basic information in building plans could be routinely released and the general public may obtain a copy of building profile and footprint drawings of building plans over the counter.

In assessing whether these exceptions would apply when a formal request is made under the Act you need to determine, on a case by case basis, what information in a plan could reasonably be expected to harm the security of a home or business.

Development/Subdividing

When the County has knowledge of a potential development as a result of a developer making informal approaches to staff, normally there is an expectation of confidentiality between the officials of the County and the developer at this preliminary stage.

If a formal request was made for records, the County could also respond to the applicant by citing section 28 of the Act if the matter will be released to the public within 60 days after the applicant's request is received.

Release of any information during this process may require written permission of the applicant.

Development & Subdivision Notification

The Act permits Leduc County to disclose personal information for the purpose of complying with an enactment of Alberta. For example, the *Municipal Government Act* provides for notifications to the public for the purposes of soliciting public input prior to approval being provided for land use changes and other planning decisions. It is appropriate for the public and Council to know that the person objecting to such planning matters is a property owner and/or resident of the County.

Therefore, generally the public will continue to have access to such information, including the names of individuals objecting to the 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.

In accordance with this process, records supporting or opposing a specific planning issue are submitted for the purpose of soliciting such input. The public interest is served by having open government at the local level; withholding names of residents who favor or oppose the initiatives may stifle participation.

Discovery Process

The Act does not apply to records relating to a prosecution if all proceedings have not been completed. If the matter investigated comes before the courts, rules of discovery apply. The scope of the Act also does not limit information available in a legal proceeding.

Therefore, the normal legal process applies when Leduc County is served with a court order or "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 or individual may choose to file a request under the Act 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.

Enforcement Records

The Act protects from release information that would harm a law enforcement matter. A law enforcement matter includes investigations that lead or could lead to a penalty or sanction being imposed. Access to some or all information collected as part of an investigation should be limited within Leduc County to those who have involvement in the investigation and its outcome.

It should be noted that an individual's right of access to their own personal information must be balanced against the harm from release such as a harm to a law enforcement investigation. The stage of an investigation may affect the applicability of exceptions under the Act. For example, an individual's own information would not be withheld as harmful to a law enforcement matter after the investigation is completed. However, information that even indirectly reveals the identity of a confidential source of information, would likely continue to be withheld even after the investigation is completed.

When a formal request is made under the Act for a bylaw enforcement record, third party personal information must be severed from the complaint files before the records are disclosed.

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.

In most cases the removal of personal identifiers will be sufficient to protect individual's 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.

Normally you would not sever the names of staff members from bylaw enforcement records when they are released. It is not an unreasonable invasion of privacy to disclose the identity of a staff member in connection with services provided as an employee, or when acting on behalf of the Leduc County unless there is a reasonable expectation that disclosure may threaten the health or safety of the staff member or another person.

FCSS Client Files

All requests for client related records will be treated as formal requests under the Act and must be forwarded to the Freedom of Information and Protection of Privacy Coordinator. This information is to be kept in strict confidence within the County.

Section 84(1)(e) of the Act allows a child's guardian to request personal information on the child's behalf, but this right is not automatic.

The identity of a person who reports suspicion of a child in need of protection (the reporter) will not be disclosed, except to the investigating team (Ministry of Family and Social Services, Police and other law enforcement agency), the reporter or the reporter's lawyer, unless the reporter has consented in writing to the release of their identity.

Where information about a child in need of protection is identified in the records, the privacy and safety of the child, third parties or informants will be protected by severing if they do not consent to release of their information (see sections 17, 18 and 20 of the Act).

In Camera Meetings

Sections 22 and 23 are discretionary exceptions for information that would reveal certain advice from officials, drafts of bylaws, resolutions or other legal instruments, or the substance of deliberations of in camera meetings. If a staff report is considered in camera, it may be withheld. However, with the exception of specific areas such as building security, land negotiations, personnel, litigation and labour relations, the Leduc County may decide to release background material in a staff report, and in some cases the report itself. Section 17 of the Act's Regulations outlines what matters may be held in the absence of the public and section 197 of the *Municipal Government Act*.

It should be noted that the exception related to in camera records would no longer apply to such records once a matter has been "considered in a meeting open to the public". To be considered a "meeting open to the public" means that the material was tabled for discussion by members of the County in a meeting that was open for any member of the public to attend. Likewise, this exception would not apply if the information related to the substance of deliberations in a record that has been in existence for 15 years or more.

Permits & Inspections

Normally routine inspection reports may not contain any third party personal information which Leduc County would be prohibited from releasing. In the event that a "routine" inspection report contains personal information that was supplied in confidence and falls under section 16(5)(f) or business information which meets the three part test under section 15(1) the information may need to be severed before the report is released.

The definition of routine inspection reports does not include complaint driven inspections. Complaint driven reports generally fall under bylaw enforcement. The bylaw enforcement exception may apply to some information in these reports, as could fire investigation reports, and third party personal information may need to be severed (Section 19).

Land that may be Acquired by the County

Information pertaining to properties proposed for acquisition or expropriation and the disclosure of discussions with potential property owners are not releasable and are exceptions under Section 25 of the Act.

Requests for land acquisition details of property that has been purchased by the County should be referred to the Alberta Land Titles Office.

Land Related Surveys or Geotechnical Reports

Surveys or geotechnical reports are reviewed to determine whether they would be subject to exception under section 16 (disclosure harmful to the business interest of a third party). To withhold information under the "third party business interest" exception of the Act it must meet the three part test (Section 16 a through c):

Surveys/reports prepared by a consultant and/or paid by the property owner may be available to other members of the public. The federal *Copyright Act* section 27(2)(i) provides that the disclosure of a record pursuant to a provincial freedom of information act is not in violation of copyright. The applicant, however, cannot make further copies of the survey or report, or use it as documentary evidence in a separate submission to Leduc County, without permission of the holder of the copyright.

Petitions

The *Municipal Government Act* requires that the record of Council proceedings be open for inspection by the public, and that any person may make copies and extracts of such records. Furthermore, it requires that citizens provide their names and addresses on a petition to be submitted to Council (see section 224 of the *Municipal Government Act*).

In the case of most local government petitions, the names and addresses would be releasable. If, instead of writing, individuals spoke up at public meetings, they would identify themselves and state where they reside, as the place of residence would indicate whether they have a right to speak to an issue. Alternatively, if they signed a public petition, their consent to have their names disclosed in support of a particular issue could be inferred.

Personnel Records

The Act includes a rationale that some information should be available about an officer, employee, and a member of Council, including a person retained under contract to perform services for Leduc County. Information which may be released is the actual public service classification given to an employee; the responsibilities or duties or job description for a position occupied; salary range and information about discretionary benefits paid to such individuals.

Normally, elected officials should not have access to personnel files unless they have written consent of the employees, or in circumstances where they are acting as officials of Leduc County and require access to the information to perform their duties. 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.

Surveillance Systems

Any record of the image of an identifiable individual is a record of personal information. Since surveillance systems collect personal information about identifiable individuals, Leduc County must determine if they have the authority to collect personal information under section 33 of the FOIP Act.

Leduc County must be able to demonstrate to the Information and Privacy Commissioner that any proposed or existing collection of personal information by surveillance cameras is authorized. A privacy impact assessment must be completed by the FOIP Coordinator prior to installation of any surveillance system.

Policing Investigations

A number of provisions of the Act permit Leduc County to disclose information to assist police in their investigations. If the police have a warrant, court order or a subpoena, the Act permits Leduc County to provide the police with any personal information specifically covered by the warrant, court order or subpoena.

If the police are undertaking an active investigation, Leduc County may disclose personal information to assist in that "official" investigation. The head of the County exercises discretion to release information under this provision if the police can satisfy the County that the request is justified by providing details in writing.

Leduc County may disclose personal information to another law enforcement agency if they are satisfied that such a condition exists or there is an investigation underway. This precludes the sharing of information for the purposes of a "fishing expedition".

Remuneration and Salary Information

County remuneration and salary range information will generally be routinely available under the *FOIP Act*.

Information provided on salary ranges in the Collective Agreement, Chief Administrative Officer and Designated Officer's and Council salaries are all releasable under Sections 217(4) of the *Municipal Government Act* and 16(2(e)) of the *FOIP Act*.

This permits disclosure of information about the third party's position, functions or remuneration as an officer, employee or member of the local government. Interpretation of this section of the *Freedom of Information and Protection of Privacy Act* allows disclosure of the salary range amounts and benefits received as a result of employment as well as any applicable severance payments.

Similarly, if the information is about gross expenses incurred by the third party while traveling at the expense of the County, public access to the information cannot be withheld under the personal privacy protections of the *FOIP Act*.

Tax Roll

The *Municipal Government Act* indicates that taxpayers must provide any necessary information for the municipality to prepare its tax roll (section 328).

Requests for information contained in the tax roll are routinely available to the designated taxpayer.

The Leduc County may disclose the amount of unpaid taxes on a specific property if a request is made for the tax certificate for a particular property. This disclosure is authorized under the *Municipal Government Act* even if such property tax information could be considered personal information if it pertained to a private residence. Sections 40(d) and (e) of the Freedom of Information and Protection of Privacy Act permit disclosure of personal information by the Leduc County for the purpose of complying with an enactment, in this case the *Municipal Government Act* (section 350) allows disclosure.

The *Municipal Government Act* requires that a tax arrears list must be posted annually, no later than March 31st, in a place that is accessible to the public during regular business hours. This list should include the suppression of names and mailing addresses of individuals, as the liable persons have been notified (section 412).

Tendering Documents

Records related to the tendering process and the results of the tendering are subject to the legislation. Portions of these records may need to be severed if they fall within one of the exceptions listed under Division 2 of the Act. These exceptions are listed under Access to Information and Protection of Privacy.

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 how much is being paid for the work. **However, there may be some information contained in a contract, which would not be released.** If the contract details include pricing strategies or proprietary information, this information could be severed provided it meets the three-part test in section 16 (disclosure harmful to the business interests of a third party).

Confidentiality clauses in such contracts are, in effect, overridden by the Act. However, an implied or explicit understanding of confidentiality in such contracts will be an important consideration in attempting to withhold access to the records. This is particularly true where contracts were traditionally treated as confidential.