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ABSTRACT:

Applicants requesting access to a governmental record relating to the supply of goods and services (such as an outsourcing arrangement) will invariably expose third party business interests due to the nature of those contracted obligations. The burden rests with the third party to demonstrate that the information in question satisfies all three (3) limbs of the statutory provision – namely, that it was sensitive business information supplied in confidence that would result in a loss of competitiveness (whether in terms of negotiating leverage, or overall marketplace/economic competitiveness). It is the term 'supplied' that will receive the bulk of our attention in this article. We aim to show that the term has been interpreted and applied in an artificial, arcane and unreasonable manner by the Information and Privacy Commissioner. The focus of this article will be British Columbian law, primarily due to the sheer number of decisions – especially in relation to outsourcing arrangements – rendered by that Province's Office of the Information and Privacy Commissioner.

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Protecting Third Party Business Interests under Canadian Freedom of Information Legislation: A Review of British Columbia's Act

Introduction

Freedom of information legislation is designed to promote just that – access to governmental information. The *Freedom of Information and Protection of Privacy Act* of British Columbia ("BC") is no different; access to governmental information is viewed as promoting democracy, transparency and citizenry by making "public bodies

more accountable to the public and... protect[ing] personal privacy by... giving the public a right of access to records"¹, *inter alia*.

However, the right to access governmental information is not unfettered. There are certain instances where the public good may actually be harmed by undue access to governmental information – like policy recommendations developed by or for a Minister, legal advice, or disclosures harmful to law enforcement or individual safety.² The applicant requesting the record would therefore receive a redacted copy of the contract which only exposes the information that is not exempt under the *BC Act*.

The focus of this article is section 21(1) (disclosures harmful to the business interests of a third party):

“The head of a public body must refuse to disclose to an applicant information

(a) that would reveal

(i) trade secrets of a third party, or

(ii) commercial, financial, labour relations, scientific or technical information of or about a third party,

(b) that is supplied, implicitly or explicitly, in confidence, and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person or organization, or

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.”³

¹ S. 2 of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996 c. 165 (the “*BC Act*”) (emphasis added). “Records” are defined broadly to include “books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records.” (*ibid.* at Schedule 1).

² Sections 12 – 21 of the *BC Act* sets out these exceptions. The exceptions are cabinet and local public body confidences, policy advice or recommendations, legal advice, disclosure harmful to law enforcement, disclosure harmful to intergovernmental relations or negotiations, disclosure harmful to the financial or economic interests of a public body, disclosure harmful to the conservation of heritage sites, etc., disclosure harmful to individual or public safety, information that will be published or released within sixty (60) days, disclosure harmful to business interests of a third party, disclosure harmful to personal privacy, and disclosure of information relating to abortion services.

³ *Ibid.*

Administrative Law and Jurisprudence

Section 21(1) is most often triggered when public bodies enter into outsourcing arrangements, or similar types of contracts, with private third parties. Applicants requesting access to a governmental record will therefore also expose third party business interests due to the nature of the outsourced obligations. The burden will always rest with the third party to demonstrate that the information in question satisfies all three (3) limbs of the provision – namely, that it was sensitive business information supplied in confidence that would result in a loss of competitiveness (whether in terms of negotiating leverage, or overall marketplace/economic competitiveness). It is the term ‘supplied’ that will receive the bulk of our attention in this article. We aim to show that the term has been interpreted and applied in an artificial, arcane and unreasonable manner by the BC Information and Privacy Commissioner and the BC Courts.

It should be noted that public bodies themselves, are often protected through other provisions in the *BC Act*, and insofar as their interests are protected from public disclosure, there is little incentive to protect the legitimate business interests of third parties. For instance, section 17 of the *BC Act* is drafted in a remarkably permissive manner:

“(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia *or the ability of that government to manage the economy*, **including** the following information:

- (a) trade secrets of a public body or the government of British Columbia;
- (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;
- (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
- (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
- (e) information about negotiations carried on by or for a public body or the government of British Columbia.
- (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.”⁴

⁴ *Supra.* at Fn. 1 (emphasis added).

The term 'supplied' has been feverishly interpreted to mean information provided by a third party that was not negotiated. For instance, in Order 03-04 the BC Information and Privacy Commissioner held that:

"information in an agreement negotiated between a public body and third party will not normally qualify as information that has been "supplied" to the public body. The exceptions to this tend to be information that, though in a contract between a public body and a third party, is not susceptible of negotiation and change and is likely of a proprietary nature."⁵

It appears to have been imported into British Columbian law by the Information and Privacy Commissioner in 1994. In Order No. 26-1994, a Union sought access to a contract between the British Columbia Hydro and Power Authority and Westech Information Systems Inc.. The Information and Privacy Commissioner held that Ontario's interpretation of "supplied in confidence" provided a reasonable basis for application to British Columbia:

"In a series of orders, the Ontario Information and Privacy Commissioner reviewed the applicability of the third-party business information exception (section 21(1) in the British Columbia legislation):

A number of previous orders have addressed the question of whether information contained in an agreement entered into between an institution and a third party was supplied by the third party. In general, the conclusion reached in these orders is that, for such information to have been supplied to an institution [public body in B.C.], the information must be the same as that originally provided by the affected person. Since the information contained in an agreement is typically the product of a negotiation process between the institution and a third party, that information will not qualify as originally having been 'supplied' for the purposes of section 17(1) of the Act. [Ministry of Environment and Energy, Ontario Order P-609, page 2, January 12, 1994]

...the information contained in these records was the result of negotiations between the institution and the affected parties and does not consist of information 'supplied' by the affected parties to the institution. In addition, I cannot conclude that disclosure of the records would permit the drawing of accurate inferences about information actually supplied to the institution by the affected parties, and, therefore, the institution and affected parties have failed to satisfy the second part of the section 17(1) test. [Re: Stadium Corporation of Ontario Limited, Ontario Order P-263, page 17, January 24, 1992]

⁵ [2003] B.C.I.P.C.D. No. 4 at para. 30. See also Order 01-39 [2001] B.C.I.P.C.D. No. 40, Order 03-03 [2003] B.C.I.P.C.D. No. 3, Order 03-15 and Order 04-06. The BC courts have also embraced this interpretation on judicial review, see *Jill Schmidt Health Services Inc.* [2001] B.C.J. No. 79, 2001 BCSC 101 (upholding Order 00-22, [2000] B.C.I.P.C.D. No. 25) and *Canadian Pacific Railway v. British Columbia (Information and Privacy Commissioner) et al.* [2002] B.C.J. No. 848, 2002 BCSC 603 (upholding Order 01-39) cases. Other courts have also adopted a similar interpretation as well. See *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851, and *Canada Post v. Canada (Minister of Public Works)*, [2004] F.C.J. No. 415 (TD), affirmed [2004] F.C.J. No. 2016 (CA) and *Canada (Minister of Public Works and Government Services) v. Hi-Rise Group Inc.*, [2004] F.C.J. No. 468 (C.A.).

It has been established that information which is the result of contractual negotiations between a governmental institution and an affected person, does not qualify as information which has been 'supplied', regardless of whether this information may have been treated confidentially.... [Ministry of Natural Resources, Ontario Order P-385, page 3, December 18, 1992]..."⁶

Although, the Information and Privacy Commissioner (at that time) did acknowledge that "a strict application of this interpretation could produce results that were not intended by the legislators."⁷ Later in this work we argue that the entire rationale for this interpretation is flawed, and ignores the purposes of *BC's Act*, and the realities of competitive bidding.

Nonetheless, a more exhaustive discussion of the term 'supplied' was also set out in Order 01-39, where the Information and Privacy Commissioner noted:

"[43] ... By their nature, contracts are negotiated between the contracting parties. The fact that the requested records are contracts therefore suggests that the information in them was negotiated rather than supplied. It is up to...the party resisting disclosure, to establish with evidence that all or part of the information contained in the contracts including their schedules was not negotiated, as would normally be the case, but was "supplied" within the meaning of s. 21(1)(b).

[44] A number of cases have addressed the difference between negotiated and supplied information (see Orders 00-09, 00-22, 00-24, 00-39, 01-20). **The thrust of the reasoning in all of these decisions is that the information contained in contractual terms is generally negotiated. Information may be delivered by a single party or the contractual terms may be initially drafted by only one party, but that information or those terms are not "supplied" if the other party must agree to the information or terms in order for the agreement to proceed** (see Order 01-20, paras.81-89).

[45] Information that might otherwise be considered negotiated nonetheless may be supplied in at least two circumstances. First, the information will be found to be supplied if it is relatively "immutable" or not susceptible of change. For example, if a third party has certain fixed costs (such as overhead or labour costs already set out in a collective agreement) that determine a floor for a financial term in the contract, the information setting out the overhead cost may be found to be "supplied" within the meaning of s. 21(1)(b). To take another example, if a third party produces its financial statements to the public body in the course of its contractual negotiations, that information may be found to be "supplied." It is important to consider the context within which the disputed information is exchanged between the parties. A bid proposal may be "supplied" by the third party during the tendering process. However, if it is successful and is incorporated into or becomes the contract, it may become "negotiated" information, since its presence in the contract signifies that the other party agreed to it.

[46] In other words, information may originate from a single party and may not change significantly - or at all - when it is incorporated into the contract, but this does not necessarily mean that the information is "supplied." The intention of s.

⁶ Order No. 26-1994.

⁷ Order No. 26-1994.

21(1)(b) is to protect information of the third party that is not susceptible of change in the negotiation process, not information that was susceptible of change but, fortuitously, was not changed. In Order 01-20, Commissioner Loukidelis rejected an argument that contractual information furnished or provided by a third party and accepted without significant change by the public body is necessarily "supplied" within the meaning of s. 21(1) (at para. 93).

[...]

[48] Most recently, in Order 01-20, Commissioner Loukidelis again stated that information provided by one party and accepted by another (as evidenced by its inclusion in the contract), is negotiated, not "supplied" information (at para. 93)."⁸

As noted earlier, this narrow and unreasonable interpretation owes its roots to the Ontario Information and Privacy Commissioner. In Ontario's *Freedom of Information and Protection of Privacy Act*⁹, it is section 17 (1) that deals with third party information. It states that:

"A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be supplied;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

(d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute."¹⁰

On judicial review, the Ontario Superior Court of Justice has twice upheld the Ontario Information and Privacy Commissioner's finding that "supplied" must refer to the non-negotiated aspects of outsourcing (and other) contracts. First, in *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*¹¹, where a union had requested details of sale between Boeing (and others) and the Government of Ontario's Ministry of Economic Development and Trade, the Court upheld the Information and Privacy Commissioner's findings that although the contract contained commercial, financial and labour relations information, the information (as a whole) had not been "supplied" to the Ministry. The Court held that the appropriate

⁸ [2001] B.C.I.P.C.D. No. 40 (emphasis added). Order 03-02 also contains an extensive review of the third party business interest exception.

⁹ R.S.O. 1990, c. F.31.

¹⁰ *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 ("Ontario's Act").

¹¹ [2005] O.J. No. 2851.

standard of review was that of "reasonableness", and accordingly upheld the Information and Privacy Commissioner's disclosure:

"[18] The Commissioner's approach in this case was consistent with the approach taken in other cases interpreting s. 17(1). The Commissioner has consistently found that information in a contract is typically the product of a negotiation process between the parties and that the content of a negotiated contract involving a governmental institution and another party will not normally qualify as having been "supplied". Even where the contract is preceded by limited negotiation, or where the final agreement substantially reflects information that originated from a single party, the Commissioner has concluded that the information was not supplied (for example, IPC Order MO-1706, pp. 9-10; IPC Order P-1545 at pp. 9-10).

[19] The Commissioner took the view that the records before him did not contain information which was supplied to the Ministry because the information was found in complex contracts which were the subject of agreement by a number of parties, in the case of the Asset Purchase Agreement, and between the government and Bombardier with respect to the other two agreements. His conclusion that complex and detailed agreements like the ones before him were the result of negotiations was a reasonable one. While the Ministry has suggested that its role was passive with respect to the Asset Purchase Agreement, it was reasonable for the Commissioner to conclude that the agreement was, nevertheless, negotiated and that it reflected all the parties' interests."¹²

It has also been held that even a bid or proposal which was furnished in response to an RFP ("request for proposal") or similar tendering document is not necessarily 'supplied', especially if the bid is successful.¹³

Then, in *Canadian Medical Protective Assn. v. John Doe*¹⁴, concerning a request to obtain details of a membership fee arrangement between the Canadian Medical Protective association and the Ontario Medical Association, the Ontario Superior Court of Justice again reviewed the adjudicator's decision based on "reasonableness".¹⁵ The Court upheld the adjudicator's decision regarding the section 17 (1) disclosure:

"[46] With respect to the second part of the test, the Adjudicator stated that, as a general rule, information in a contract will be considered "mutually

¹² *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 at paras. 18 and 19.

¹³ See Order 03-15, [2003] B.C.I.P.C.D. No. 15 at para. 66:

"An RFP process aims to generate competitive proposals from qualified parties for the provision of goods or services to government. If all goes well, it leads to the government contracting with one, or more, of the proposing parties to provide the goods or services sought. It would hardly be surprising that terms in a contract arrived at resemble, or are even the same as, terms in the contractor's proposal. It might well be more unusual for the contract arrived to be completely out of step with the terms of the contractor's proposal. A successful proponent on an RFP may have some or all of the terms of its proposal incorporated into a contract. As has been said in past orders, there is no inconsistency in concluding that those terms have been "negotiated" since their presence in the contract signifies that the other party agreed to them."

¹⁴ [2008] O.J. No. 3475.

¹⁵ *Ibid.* at para. 39.

generated" as opposed to "supplied" unless it can be shown that the information would reveal information actually supplied by the third party.

[47] The Adjudicator held that the parties had failed to meet their onus of proving that the information (except for Table 1) in the 2004 MOU was "supplied" under s. 17(1) for the following reasons:

- a) the 2004 MOU was an end product of a negotiation process, and sets out mutually agreed upon terms;
- b) disclosure of the 2004 MOU would not reveal, or permit the drawing of accurate inferences with respect to, any information actually supplied to the Ministry;
- c) Appendices 1 and 2 relate to and expand upon, the provisions of the main agreement, as they are not distinguishable from the main agreement for the purpose of the "supplied" issue;
- d) although the information in Appendix 2 may have been originally provided by the CMPA, the methodology has come to represent the negotiated intention of all the parties;
- e) Table 1, relating to a previous year (2002), was attached for the purpose of illustrating the format of future Tables, and the data within Table 1 was to be used for future calculations; therefore, it was supplied and not negotiated."¹⁶

¹⁶ *Canadian Medical Protective Assn. v. John Doe*, [2008] O.J. No. 3475 at paras. 46 and 47.

Analysis

This narrow and stifling interpretation of 'supplied' renders the section 21(1) exception (and the section 17(1) exception under *Ontario's Act*) meaningless and devoid of any air of commercial reality. All government contracts are negotiated. Short of a trade secret, or (perhaps) a proprietary pricing formula¹⁷, nothing would ever be 'supplied' to the public body under this approach. The power imbalance in governmental contracting and negotiations is painfully evident, even for the most powerful corporations. *Everything* is negotiated.

'Supplied' must be interpreted in a manner that permits even negotiated information to be withheld from public disclosure. The Supreme Court of Canada has expressly noted that:

"When one interpretation can be placed upon a statutory provision which would bring about ***a more workable and practical result***, such an interpretation should be preferred ***if the words invoked by the Legislature can reasonably bear it...***"¹⁸

This is precisely the situation here. Public bodies outsource certain functions to third parties because the public good is actually enhanced through the efficiency and competitiveness of the private sector. The interests of these third parties must be protected under the *BC Act's* exceptions.

Indeed, the Supreme Court of Canada has (repeatedly) endorsed a purposive approach to statutory interpretation:

"... namely, courts are obliged to determine the meaning of legislation in its total context, having regard to the purpose of the legislation, the consequences of proposed interpretations, the presumptions and special rules of interpretation, as well as admissible external aids. In other words, the courts must consider and take into account all relevant and admissible indicators of legislative meaning. After taking these into account, the court must then adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) its efficacy, that is, its promotion of the legislative purpose; and (c) its acceptability, that is, the outcome is reasonable and just."¹⁹

This is, of course, an expansion of Professor Driedger's more concise statement that:

"Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense

¹⁷ Even in this instance it is unclear if this would be protected, since the pricing formula itself might have been the subject of intense negotiation(s), or intense scrutiny (at the very least). See Order F08-22 (discussed *infra*).

¹⁸ *Markevich v. Canada*, 2003 SCC 9, [2003] 1 S.C.R. 94 citing *Berardinelli v. Ontario Housing Corp.*, [1979] 1 S.C.R. 275, per Estey J., at p. 284 (emphasis added).

¹⁹ *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550, taken from *Driedger on the Construction of Statutes*, 3rd ed. by Ruth Sullivan. Toronto: Butterworths, 1994 (emphasis in original).

harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."²⁰

Therefore, if we examine the purposes of the *BC Act*, namely "to make public bodies *more* accountable to the public..."²¹, it is clear that the rights, responsibilities and protections afforded under the *BC Act* are not absolute and must be interpreted to give due regard to countervailing considerations and interests. Even *Ontario's Act* states that its purpose is:

"to provide a right of access to information under the control of institutions in accordance with the principles that,

- (i) information should be available to the public,
- (ii) necessary exemptions from the right of access should be limited and specific..." (*Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 at s. 1 (a)).

Accordingly, it must be recognized that access to information is not an absolute right. It must be weighed against other competing considerations.

Given the enumerated exceptions under the *BC Act*, it can be said that the scheme of the *BC Act* is to provide a *limited* right of access to information, which must be weighed against other competing values. There is a balance that must be struck between making "public bodies more accountable to the public"²², versus "information [which] is... likely to be of significant interest to those who would compete with [the third party]... but is [nonetheless] information to which those competitors would not ordinarily have access."²³ The current interpretation of the word 'supplied', skews this balance heavily in favour of the applicant, with little (if any) regard to alternative interpretations which give rise to a more workable and practical result.

In Order F09-04²⁴ (a recent decision concerning access to an outsourced revenue management project between EDS Advanced Solution Inc. and the Government of British Columbia), the Information and Privacy Commissioner continues to disregard the balance that must be struck in interpreting and applying the *BC Act*. The Commissioner states that *BC's Act*:

"should be administered with a clear presumption in favour of disclosure... [as] nowhere is the right of access more important for the accountability of public bodies to the public than in the arena of public spending through large-scale government outsourcing of public services to private enterprise. Businesses

²⁰ Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27, taken from Driedger, Elmer A. *Construction of Statutes*, 2nd ed. Toronto: Butterworths, 1983. However, see Mohammed, E. "How Many Times Have You Been Cited By The Supreme Court", *The Advocates' Quarterly*, Vol. 35 No. 2, for a discussion of the subtle difference between Driedger and Sullivan's formulation of the modern approach. See also, *Haida Nation v. British Columbia (Minister of Forests)*, [1997] B.C.J. No. 2480.

²¹ *Supra.* at Fn. 1 at sec. 2 (emphasis added).

²² *Supra.* at Fn. 1.

²³ *Shannex Health Care Management Inc. v. Nova Scotia (Attorney General)*, 2005 NSCA 158 (CanLII) para. 31.

²⁴ [2009] B.C.I.P.C.D. No. 7.

that contract with government must fully appreciate that the transparency of those dealings has no comparison in fully private transactions."²⁵

This view is undoubtedly self-serving. The *BC Act* itself clearly states that its purpose is "to make public bodies *more* accountable"²⁶. Contrast this with Nova Scotia's *Freedom of Information and the Protection of Privacy Act*²⁷ which is actually drafted in more absolute terms. The purpose of *Nova Scotia's Act* being, "to ensure that public bodies are *fully* accountable to the public"²⁸ (although, sub-section 2 (a) (iii) of *Nova Scotia's Act* does recognize that there are "limited exceptions to the rights of access").

The Commissioner's enthusiastic and partisan views that the *BC Act* has a "presumption in favour of disclosure"²⁹, ignores our earlier comment that section 17 (1) of the *BC Act* has been drafted very permissively (and favourably) towards governmental interests.³⁰ The legislation does not require that any of the government's information be "supplied" as to prevent disclosure. Indeed, the government may simply 'deem' it "financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value"³¹. The government's interests are clearly well protected. There cannot be any presumption in favour of disclosure.

²⁵ *Ibid.*

²⁶ *Supra.* at Fn. 1 at sec. 2 (emphasis added).

²⁷ *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993, c. 5 ("*Nova Scotia's Act*").

²⁸ *Ibid.* at s. 2 (a). See para. 54 of the trial judgment in *Shannex Health Care Management Inc. v. Attorney General of Nova Scotia representing the Nova Scotia Department of Health*, 2004 NSSC 54 (CanLII) for a discussion of this).

²⁹ [2009] B.C.I.P.C.D. No. 7 at para. 18.

³⁰ Section 17 (1) states that

"The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:

- (a) trade secrets of a public body or the government of British Columbia;
- (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;
- (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
- (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
- (e) information about negotiations carried on by or for a public body or the government of British Columbia.
- (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia."

³¹ *Ibid.* at 17 (1) (b).

Legislative Reform and Comparable Legislation

The BC Legislature, at one time, appeared sensitive to the concerns of third parties in protecting their business interests. On May 18th, 2006 Bill 30 – *the Miscellaneous Statutes Amendment Act (No.2)* – was proclaimed. The eponymous bill contained amendments to several of BC's statutes, including the *Freedom of Information and Protection of Privacy Act*³².

Bill 30, on first reading, sought to introduce a new provision into the *BC Act*. The provision would explicitly protect third party business interests disclosed under a 'joint solution project' (i.e. an outsourcing arrangement). It would have struck the appropriate balance between third party business interests, and those of the public – a balance that is missing in the current body of administrative law and jurisprudence on this matter. Section 9 of Bill 30 stated:

" 9 The following section is added:

Disclosure in relation to designated joint solution projects

21.1 (1) The minister responsible for this Act may, by order, designate a procurement project of the government of British Columbia or a public body as a joint solution project if the minister considers that

(a) the **nature of the negotiations required for the procurement is such that the negotiating parties necessarily share or jointly develop a substantial amount of sensitive commercial or financial information**, and

(b) the information should be subject to this section.

(2) An order under subsection (1) may be made only before the parties share or jointly develop, explicitly in confidence, information in relation to the project.

(3) To the extent practicable, if a project has been designated as a joint solution project under subsection (1), the government of British Columbia or the head of the public body, as applicable, must make public as soon as reasonably possible all provisions of the contract except those that would be subject to the application of this Division.

(4) If a project has been designated as a joint solution project under subsection (1), the head of a public body must refuse to disclose to an applicant information

(a) that would reveal

(i) trade secrets of a third party, **or**

(ii) commercial, financial, labour relations, scientific or technical information that is

³² (we will still refer to this as the "BC Act").

- (A) of or about a third party, **or**
 - (B) jointly developed for the purposes of the project,
- (b) that is **shared or jointly developed explicitly in confidence**, and
- (c) the disclosure of which could reasonably be expected to
- (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
 - (ii) result in similar information no longer being shared with or jointly developed with the government of British Columbia or the public body when it is in the public interest that similar information continue to be shared or jointly developed,
 - (iii) result in undue financial loss or gain to any person or organization, or
 - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.
- (5) Subsection (4) does not apply if
- (a) the third party consents to the disclosure,
 - (b) the disclosure is in accordance with an agreement between the government of British Columbia or the public body, as applicable, and the third party respecting when the information ceases to be subject to subsection (4), or
 - (c) the information is in a record that is in the custody or control of the archives of the government of British Columbia or the archives of a public body and that has been in existence for 50 or more years.
 - (6) Nothing in this section affects an order of the commissioner under section 58(2) (a) that was made before the project was designated under this section."³³

If passed, this provision would have allowed various public-private partnership agreements to maintain important confidential elements by virtue of an order from the Minister. Rather than subject the information to an arcane, and often adversarial debate, as to whether the information was "supplied", the proposed amendment excluded the term entirely; and instead provided that where the information would reveal trade secrets or other sensitive financial information of third parties, disclosure would be refused if the procurement project was declared as a joint solution project.

However, on the second reading of the Bill on May 11th, 2006, section 9 was deleted.³⁴ The legislative debates centred on a July 2002 memorandum of

³³ Bill 30 – 2006: Miscellaneous Statutes Amendment Act (No. 2), 2006 (available at http://www.leg.bc.ca/38th2ND/1ST_read/gov30-1.htm) (emphasis added).

understanding between BC Hydro (a Provincial Crown corporation) and Accenture (a global consulting and outsourcing company, previously incorporated in Bermuda, now Ireland³⁵). Politicians and concerned citizens viewed the deal as yet another step towards privatization of BC's electricity supply.³⁶ During the legislative debates Leonard Krog stated:

"There are significant concerns around this legislation. It is about the concerns of British Columbia. It gets back to this government's handling of the whole privatization of Hydro and the Accenture deals. We know now, according to a recent poll, that 84 percent of British Columbians want a public inquiry into B.C. Hydro's Accenture deal."³⁷

In many respects – like all political debates – politicians appeared more concerned with the public's perception of the deal, than fair and balanced law-making.³⁸ Rather than discuss the benefits of the proposed amendments, the Legislature was content to allow the removal of section 9 with little comment. Indeed, the removal was met with praise by Mike Farnworth who stated that "the government [decision] to eliminate section 9... was a wise decision, and is clearly a victory for privacy for the people of British Columbia."³⁹

However, political pandering is only one side of the equation. A more substantive rationale can be traced to the Information and Privacy Commissioner for British Columbia, David Loukidelis. In a letter dated, April 27th, 2006 the Commissioner wrote to the Minister of Labour and Citizens' Services (the Honourable Mike de Jong), and expressed his concern regarding the proposed amendment.⁴⁰ The letter was also sent to the Opposition in the House, and posted online. The Commissioner stated:

"I am deeply concerned by the proposed s. 21.1 because it would significantly reduce the public's right of access to information. It would turn back the clock on access to information and accountability in British Columbia at a time when the trend elsewhere in Canada is toward more access to information and greater accountability. I urge you to delete the provision from this Bill and

³⁴ The Progress of Bills for the 2nd Session of the 38th Parliament can be found at <http://www.leg.bc.ca/38th2nd/votes/progress-of-bills.htm>. The amended version of the Bill was made available on May 15th for Third Reading, with section 9 visibly struck-through (available at <http://www.leg.bc.ca/38th2nd/amend/gov30-2.htm>).

³⁵ "Accenture Completes Change in Place of Incorporation", Sep. 1st, 2009 (available at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTQzMjZ8Q2hpbGRJRDR0tMXxUeXBIPtM=&t=1>).

³⁶ See for instance, NDP party member, Caroline James, (available online at: <http://www.bcndp.ca/newsroom/whats-government-hiding-accenture-deal-asks-kwan>).

³⁷ Second Session, 38th Parliament, May 11, 2006, Volume 11, Number 7, Second Reading, p. 4748 ("Second Reading").

³⁸ During the debate, several politicians availed themselves of the public time, and welcomed various schools who sent classes to observe the debates as a field trip. See for instance, the Hon. W. Oppal welcoming a six grade class at p. 4751, or NDP party member, J. Brar welcoming a class of grade four students at p. 4757.

³⁹ Second Reading, p. 4754.

⁴⁰ Available at [http://www.oipcbc.org/publications/Comm_Public_Comments/F06-26470deJongLetter\(Apr2706\)-.pdf](http://www.oipcbc.org/publications/Comm_Public_Comments/F06-26470deJongLetter(Apr2706)-.pdf) and [http://www.llbc.leg.bc.ca/public/PubDocs/bcdocs/402672/deJongLetter\(Apr2706\).pdf](http://www.llbc.leg.bc.ca/public/PubDocs/bcdocs/402672/deJongLetter(Apr2706).pdf).

preserve British Columbians' right of access to information in the interests of accountability."⁴¹

The impact of this letter was significant. On review of the Legislative Committee meetings, it is clear that the words of Commissioner directly influenced the legislative process. On Wednesday May 10th, 2006, during the debates of the Legislative Assembly, the Honourable Mike de Jong made the following announcement (followed by raucous applause):

"I rise pursuant to Standing Order 81.1 and want to advise the House that following extensive discussions with the Opposition House Leader, we have managed to come to an agreement regarding the completion of business for the balance of the current sitting, which is ending on Thursday, May 18.

That schedule will see all of the estimates and bills presently on the order paper completed except for Bill 23, which is the Public Inquiry Act, and Bill 32, the Adult Guardianship and Personal Planning Statutes Amendment Act, 2006. Those bills obviously have been the subject of comments by stakeholders and interested parties, and the government believes it would be beneficial to hear further from those with views. Those two bills will not be forthcoming or proceeding this session.

The Opposition House Leader has also been advised that given the concerns expressed by the freedom-of-information and privacy commissioner with respect to section 9 of Bill 30, the Miscellaneous Statutes Amendment Act (No. 2), 2006, the government doesn't intend to proceed with that proposed amendment to the FOI Act. [Applause]."⁴²

Ironically, the deletion of the proposed amendment – at the urging of the Commissioner – lacks the very transparency and accountability that the Office of the Information and Privacy Commissioner advocates. The matter was not put to a debate, nor was there any opportunity for submissions by third parties. As noted, the foregoing announcement was made on a Wednesday (May 10th, 2006), and the provisions were deleted by Monday (May 15th, 2006) for the Bill's Third Reading.

In effect, the Legislature permitted the Commissioner – an unelected and (understandably) highly partisan organ of the State – to *directly* affect the law-making process. We are not saying that law-making is completely independent of external influences. Rather, the unbalanced decision to strike the proposed amendments was made without consultation with other interested groups (like private companies). Harry Lali, a member of BC's Legislature, sums up the ironic, and unfortunate, fiasco well:

"I will believe the independent Privacy Commissioner over this government any day of the week and any week of the year. I'll put that on the record for the hon. member across the way."⁴³

⁴¹ *Ibid.*

⁴² Second Session, 38th Parliament, May 10, 2006, Vol 11, Number 5 at p. 4636.

⁴³ Second Session, 38th Parliament, Committee May 15, 2006, Volume 12, Number 2 at p. 4818.

Aside from our earlier views on the narrow and unworkable interpretation that the Commissioner has afforded to the word “supplied”, we will also examine his letter – indeed, if the Legislature did not wish to debate its merits, perhaps we can.

In his letter, the Commissioner states that:

“No persuasive case has been made that the balance in the statute, or decisions considering it, is not correct. To the contrary, the present level of scrutiny through s. 21 is appropriate and ever more vital as alternative service delivery and public-private partnerships move ahead at all levels of government in British Columbia. In an era of public-private partnerships and private sector delivery of public services, the case for accountability is in fact stronger now than it was a decade or more ago. Long-term contractual commitments on taxpayers’ behalf can have significant financial consequences for taxpayers and meaningful, though not unrestricted, scrutiny of such deals must be preserved under the Act.”⁴⁴

At the outset we should note that this article questions the reasonableness of the Commissioner’s interpretation of the word “supplied”; and at the very least, we hope to set out a “persuasive” case that the manner in which the term has been interpreted is indeed incorrect. Nonetheless, two years prior, the Commissioner himself acknowledge the need to protect third party interests. In 2004, the Commissioner’s submission to the Special Committee reviewing the BC Act stated that:

“Decisions of both the present and previous Commissioner have consistently acknowledged that the intent of this provision is to protect third-party interests. Numerous decisions by the Commissioners and the courts have interpreted the s. 21(1)(b) requirement that information must have been “supplied” to the public body as meaning what it says. Information in a contract that is the outcome of the give and take of contract negotiations between a third party and public body will not ordinarily qualify as having been “supplied” to the public body. Further, even information that results from negotiation will have been “supplied” where disclosure of the negotiated information would reveal underlying third-party information that was actually supplied to the public body...”⁴⁵

This passage not only highlights that the Commissioner was – and undoubtedly is – alive to the debate surrounding the word “supplied,” it also reveals a telling sign of the legislative intent behind the specific provision. Amidst the rhetoric of transparency and accountability, the Commissioner fully admits that the provision is designed to **protect** third party interests. Yet, in the Commissioner’s own decisions – and in remainder of his submissions to the Honourable Mike de Jong – he has

⁴⁴ Available at [http://www.oipcbc.org/publications/Comm_Public_Comments/F06-26470deJongLetter\(Apr2706\)-.pdf](http://www.oipcbc.org/publications/Comm_Public_Comments/F06-26470deJongLetter(Apr2706)-.pdf) and [http://www.llbc.leg.bc.ca/public/PubDocs/bcdocs/402672/deJongLetter\(Apr2706\).pdf](http://www.llbc.leg.bc.ca/public/PubDocs/bcdocs/402672/deJongLetter(Apr2706).pdf) (citing the Commissioner’s Submission of the Information and Privacy Commissioner to the Special Committee to Review the Freedom of Information and Protection of Privacy Act (February 2004), at p. 24 (available at http://www.oipc.bc.ca/publications/speeches_presentations/FOI_review.pdf)).

⁴⁵ Commissioner’s Submission of the Information and Privacy Commissioner to the Special Committee to Review the Freedom of Information and Protection of Privacy Act (February 2004), at p. 21 (available at http://www.oipc.bc.ca/publications/speeches_presentations/FOI_review.pdf) (emphasis added).

adopted an interpretation of the word “supplied” that can almost never protect third party interests.

Under the current paradigm, the *BC Act* (in effect) creates an absolute right to third party information, through the unreasonable and unworkable interpretation of the word “supplied”. As we noted earlier, this is not the intended purpose of the sub-section or the *BC Act* as a whole. Rather, the *BC Act* provides a limited right of access, that must be balanced against other competing and compelling interests. Indeed, a comparative review of the freedom of information statutes across Canada demonstrates a legislative recognition of the need to balance access to information against other competing interests (like third party interests).⁴⁶

For instance, under the *Federal Access to Information Act*⁴⁷, sub-section 2 (1) states that its “purpose... is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, *that necessary exceptions to the right of access should be limited and specific...*”⁴⁸.

In Alberta and Manitoba, the *Freedom of Information and Protection of Privacy Act* of those Provinces⁴⁹ also contains a comparable limitation. Sub-section 2 (a) of both Acts sets out “to allow any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions...”⁵⁰. New Brunswick’s *Right to Information and Protection of Privacy Act*⁵¹ also contains the same verbiage in its sub-section 2 (a).

In Newfoundland and Labrador, section 3(1) of the *Access to Information and Protection of Privacy Act*⁵² sets out purposes identical to the *BC Act*; namely, “to make public bodies more accountable to the public and to protect personal privacy...”⁵³. This is also echoed in the Northwest Territories *Access to Information and Protection of Privacy Act*⁵⁴, the Nunavut *Access to Information and Protection of Privacy Act*⁵⁵, and the Yukon *Access to Information and Protection of Privacy Act*⁵⁶ at section 1 of each of those Acts, respectively.

The Act which comes closest to an absolute right to information is Nova Scotia’s *Freedom of Information and Protection of Privacy Act*⁵⁷. The stated purpose of that Act is “to ensure that public bodies are fully accountable to the public...”⁵⁸; although,

⁴⁶ We have appended a copy of comparable Acts in Appendix A for ease of reference.

⁴⁷ R.S., 1985, c. A-1.

⁴⁸ *Ibid.* (emphasis added).

⁴⁹ R.S.A. 2000, c. F-25 and C.C.S.M. c. F175.

⁵⁰ *Ibid.*

⁵¹ S.N.B. 2009, c. R-10.6.

⁵² S.N.L. 2002 c..A-1.1.

⁵³ *Ibid.*

⁵⁴ S.N.W.T. 1994, c. 20.

⁵⁵ S.N.W.T. (Nu.) 1994, c. 20.

⁵⁶ R.S.Y. 2002, c. 1.

⁵⁷ S.N.S. 1993, c. 5.

⁵⁸ *Ibid.* (emphasis added).

sub-section 2 (a) (iii) of that Act does recognize that there are “limited exceptions to the rights of access”⁵⁹.

In sum, a review of Canada’s comparable freedom of information schemes clearly shows a legislative recognition of the need to balance competing interests. We argue that the unreasonable and unworkable definition adopted by the Commissioner, and others, betrays this balance. It makes the exemption hollow, and devoid of any air of commercial reality.

⁵⁹ *Ibid.*

CONCLUSION

Equity and the principles of natural justice demand that third party business interests be protected as well. Indeed, as it currently stands, the only 'real' information that is exempted from disclosure under outsourcing arrangements is the government's own information. Consider the decision in Order F08-22⁶⁰, concerning access to a housekeeping services agreement between the Fraser Health Authority and Sodexo MS Canada Ltd., where the Information and Privacy Commissioner held that even pricing information had not been "supplied", and could therefore be released to the applicant. Pricing information is undoubtedly the most sensitive aspect of an outsourced (or other) agreement. The steadfast and unreasonable interpretation of the word "supplied" has effectively silenced the section 21 (1) provisions of *BC's Act*. The Information and Privacy Commissioner has completely ignored the reality of modern business, and competitive bidding.

It is only if the government body 'deems' some (or most) of the third party's business interests to also represent confidential governmental information will it be protected. And, in outsourcing arrangements, often characterized by routine tension and problems, the vulnerability of the third party is heightened. Indeed, as interpreted by the Information and Privacy Commissioner, *BC's Act* leaves most of a third party's business interests at the capricious and arbitrary whim of governmental bodies.

Furthermore, in allowing a more expansive reading of the word 'supplied', there is no risk of abuse by third parties, since it is grammatically situated in the midst of a three (3) part test and hence third parties must still satisfy the other two (2) limbs of the test. The rules of modern statutory interpretation demand that the BC Information and Privacy Commissioner, as well as the Courts, take a more purposive and practical approach to the definition of 'supplied'.

⁶⁰ [2008] B.C.I.P.C.D. No. 40.

APPENDIX A

EXCERPTS FROM FEDERAL AND PROVINCIAL FREEDOM OF INFORMATION LEGISLATION CONCERNING THE DISCLOSURE OF THIRD PARTY BUSINESS INFORMATION

- I. Canada
- II. Alberta
- III. British Columbia
- IV. Manitoba
- V. New Brunswick
- VI. Newfoundland
- VII. North West Territories
- VIII. Nova Scotia
- IX. Nunavut
- X. Ontario
- XI. Prince Edward Island
- XII. Quebec
- XIII. Saskatchewan
- XIV. Yukon

I. Canada

Access to Information Act, R.S., 1985, c. A-1, available at <http://laws.justice.gc.ca/eng/A-1/>

2 (1) The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.

(2) This Act is intended to complement and not replace existing procedures for access to government information and is not intended to limit in any way access to the type of government information that is normally available to the general public.

3 In this Act, ...

"record" means any documentary material, regardless of medium or form;

4 (1) Subject to this Act, but notwithstanding any other Act of Parliament, every person who is (a) a Canadian citizen, or

(b) a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*,

has a right to and shall, on request, be given access to any record under the control of a government institution. ...

20 (1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Act that contains

(a) trade secrets of a third party;

(b) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;

(b.1) information that is supplied in confidence to a government institution by a third party for the preparation, maintenance, testing or implementation by the government institution of emergency management plans within the meaning of section 2 of the *Emergency Management Act* and that concerns the vulnerability of the third party's buildings or other structures, its networks or systems, including its computer or communications networks or systems, or the methods used to protect any of those buildings, structures, networks or systems;

(c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or

(d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

(2) The head of a government institution shall not, pursuant to subsection (1), refuse to disclose a part of a record if that part contains the results of product or environmental testing carried out by or on behalf of a government institution unless the testing was done as a service to a person, a group of persons or an organization other than a government institution and for a fee.

(3) Where the head of a government institution discloses a record requested under this Act, or a part thereof, that contains the results of product or environmental testing, the head of the institution shall at the same time as the record or part thereof is disclosed provide the person who requested the record with a written explanation of the methods used in conducting the tests.

(4) For the purposes of this section, the results of product or environmental testing do not include the results of preliminary testing conducted for the purpose of developing methods of testing.

(5) The head of a government institution may disclose any record that contains information described in subsection (1) with the consent of the third party to whom the information relates.

(6) The head of a government institution may disclose all or part of a record requested under this Act that contains information described in any of paragraphs (1)(b) to (d) if

- (a) the disclosure would be in the public interest as it relates to public health, public safety or protection of the environment; and
- (b) the public interest in disclosure clearly outweighs in importance any financial loss or gain to a third party, any prejudice to the security of its structures, networks or systems, any prejudice to its competitive position or any interference with its contractual or other negotiations.

II. Alberta

Freedom of Information and Protection of Privacy Act, R.S.A 2000, c. F-25; available at <http://foip.alberta.ca/legislation/act/>.

- 1 In this Act ...
 - (q) "record" means a record of information in any form and includes notes, images, audiovisual recordings, x-rays, 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;

- 2 The purposes of this Act are
 - (a) to allow any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions as set out in this Act,
 - (b) to control the manner in which a public body may collect personal information from individuals, to control the use that a public body may make of that information and to control the disclosure by a public body of that information,
 - (c) to allow individuals, subject to limited and specific exceptions as set out in this Act, a right of access to personal information about themselves that is held by a public body,
 - (d) to allow individuals a right to request corrections to personal information about themselves that is held by a public body, and
 - (e) to provide for independent reviews of decisions made by public bodies under this Act and the resolution of complaints under this Act.

6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record. ---

- 16(1) The head of a public body must refuse to disclose to an applicant information
- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of a third party,
 - (b) that is supplied, explicitly or implicitly, in confidence, and
 - (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
 - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

- (iii) result in undue financial loss or gain to any person or organization, or
- (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

(2) The head of a public body must refuse to disclose to an applicant information about a third party that was collected on a tax return or collected for the purpose of determining tax liability or collecting a tax.

- (3) Subsections (1) and (2) do not apply if
- (a) the third party consents to the disclosure,
 - (b) an enactment of Alberta or Canada authorizes or requires the information to be disclosed,
 - (c) the information relates to a non-arm's length transaction between a public body and another party, or
 - (d) the information is in a record that is in the custody or under the control of the Provincial Archives of Alberta or the archives of a public body and has been in existence for 50 years or more.

32(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant

- (a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant, or
- (b) information the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

- (3) Before disclosing information under subsection (1), the head of a public body must, where practicable,
- (a) notify any third party to whom the information relates,
 - (b) give the third party an opportunity to make representations relating to the disclosure, and
 - (c) notify the Commissioner.

(4) If it is not practicable to comply with subsection (3), the head of the public body must give written notice of the disclosure

- (a) to the third party, and
- (b) to the Commissioner.

III. British Columbia

Freedom of Information and Protection of Privacy Act, 1996, R.S.B.C., C. 165; available at http://www.bclaws.ca/Recon/document/freeside/--%20f%20--/freedom%20of%20information%20and%20protection%20of%20privacy%20act%20%20rsbc%201996%20%20c.%20165/00_act/96165_00.htm

2(1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by

- (a) giving the public a right of access to records,
- (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves,
- (c) specifying limited exceptions to the rights of access,
- (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies, and
- (e) providing for an independent review of decisions made under this Act.

(2) This Act does not replace other procedures for access to information or limit in any way access to information that is not personal information and is available to the public.

4 (1) A person who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record. ...

21(1) The head of a public body must refuse to disclose to an applicant information

- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of or about a third party,
- (b) that is supplied, implicitly or explicitly, in confidence, and
- (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
 - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
 - (iii) result in undue financial loss or gain to any person or organization, or
 - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

(2) The head of a public body must refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

(3) Subsections (1) and (2) do not apply if

- (a) the third party consents to the disclosure, or

- (b) the information is in a record that is in the custody or control of the archives of the government of British Columbia or the archives of a public body and that has been in existence for 50 or more years.

25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

- (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
- (b) the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

(3) Before disclosing information under subsection (1), the head of a public body must, if practicable, notify

- (a) any third party to whom the information relates, and
- (b) the commissioner.

(4) If it is not practicable to comply with subsection (3), the head of the public body must mail a notice of disclosure in the prescribed form

- (a) to the last known address of the third party, and
- (b) to the commissioner.

Schedule 1 (Definitions)

record" includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records;

IV. Manitoba

Freedom of Information and Protection of Privacy Act, C.C.S.M. c. F175; available at <http://canlii.com/en/mb/laws/stat/ccsm-c-f175/latest/ccsm-c-f175.html>

- 1 In this Act, "record" means a record of information in any form, and includes information that is written, photographed, recorded or stored in any manner, on any storage medium or by any means including by graphic, electronic or mechanical means, but does not include electronic software or any mechanism that produces records;

- 2 The purposes of this Act are
 - (a) to allow any person a right of access to records in the custody or under the control of public bodies, subject to the limited and specific exceptions set out in this Act;
 - (b) to allow individuals a right of access to records containing personal information about themselves in the custody or under the control of public bodies, subject to the limited and specific exceptions set out in this Act;
 - (c) to allow individuals a right to request corrections to records containing personal information about themselves in the custody or under the control of public bodies;
 - (d) to control the manner in which public bodies may collect personal information from individuals and to protect individuals against unauthorized use or disclosure of personal information by public bodies; and
 - (e) to provide for an independent review of the decisions of public bodies under this Act.

7(1) Subject to this Act, an applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

7(2) The right of access to a record does not extend to information that is excepted from disclosure under Division 3 or 4 of this Part, but if that information can reasonably be severed from the record, an applicant has a right of access to the remainder of the record.

- 18(1) The head of a public body shall refuse to disclose to an applicant information that would reveal
- (a) a trade secret of a third party;
 - (b) commercial, financial, labour relations, scientific or technical information supplied to the public body by a third party, explicitly or implicitly, on a confidential basis and treated consistently as confidential information by the third party; or
 - (c) commercial, financial, labour relations, scientific or technical information the disclosure of which could reasonably be expected to
 - (i) harm the competitive position of a third party,
 - (ii) interfere with contractual or other negotiations of a third party,
 - (iii) result in significant financial loss or gain to a third party,

- (iv) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied, or
- (v) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

(2) The head of a public body shall refuse to disclose to an applicant information about a third party that was collected on a tax return or for the purpose of determining tax liability or collecting a tax.

- (3) Subsections (1) and (2) do not apply if
- (a) the third party consents to the disclosure;
 - (b) the information is publicly available;
 - (c) an enactment of Manitoba or Canada expressly authorizes or requires the disclosure; or
 - (d) the information discloses the final results of a product or environmental test conducted by or for the public body, unless the test was done for a fee paid by the third party.

(4) Subject to section 33 and the other exceptions in this Act, a head of a public body may disclose a record that contains information described in subsection (1) or (2) if, in the opinion of the head, the private interest of the third party in non-disclosure is clearly outweighed by the public interest in disclosure for the purposes of

- (a) public health or safety or protection of the environment;
- (b) improved competition; or
- (c) government regulation of undesirable trade practices.

V. New Brunswick

Right to Information and Protection of Privacy Act, S.N.B. 2009, c. R-10.6 (Not yet in force); available at <http://www.canlii.org/en/nb/laws/stat/snb-2009-c-r-10.6/latest/snb-2009-c-r-10.6.html>

- 1 The following definitions apply in this Act. ...
 "record" means a record of information in any form, and includes information that is written, photographed, recorded or stored in any manner, on any storage medium or by any means, including by graphic, electronic or mechanical means, but does not include electronic software or any mechanism that produces records.(document)
- 2 The purposes of this Act are
 - (a) to allow any person a right of access to records in the custody or under the control of public bodies, subject to the limited and specific exceptions set out in this Act,
 - (b) to control the manner in which public bodies may collect personal information from individuals and to protect individuals against unauthorized use or disclosure of personal information by public bodies,
 - (c) to allow individuals a right of access to records containing personal information about themselves in the custody or under the control of public bodies, subject to the limited and specific exceptions set out in this Act,
 - (d) to allow individuals a right to request corrections to records containing personal information about themselves in the custody or under the control of public bodies, and
 - (e) to provide for an independent review of the decisions of public bodies under this Act.

7(1) Subject to this Act, every person is entitled to request and receive information relating to the public business of a public body, including, without restricting the generality of the foregoing, any activity or function carried on or performed by any public body to which this Act applies.

7(2) Without limiting subsection (1), every individual is entitled to request and receive information about himself or herself.

7(3) The right to request and receive information under subsection (1) does not extend to information that is excepted from disclosure under Division B or C of this Part, but if that information can reasonably be severed from the record, an applicant has a right to request and receive information from the remainder of the record.

- 22(1) The head of a public body shall refuse to disclose to an applicant information that would reveal
- (a) a trade secret of a third party,
 - (b) commercial, financial, labour relations, scientific or technical information supplied to the public body by a third party, explicitly or implicitly, on a confidential basis and treated consistently as confidential information by the third party, or
 - (c) commercial, financial, labour relations, scientific or technical information the disclosure of which could reasonably be expected to

- (i) harm the competitive position of a third party,
- (ii) interfere with contractual or other negotiations of a third party,
- (iii) result in significant financial loss or gain to a third party,
- (iv) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied, or
- (v) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

22(2) The head of a public body shall refuse to disclose to an applicant information about a third party that was collected on a tax return or for the purpose of determining tax liability or collecting a tax.

22(3) Subsections (1) and (2) do not apply if

- (a) the third party consents to the disclosure,
- (b) the information is publicly available,
- (c) an Act of the Legislature or an Act of the Parliament of Canada expressly authorizes or requires the disclosure, or
- (d) the information discloses the final results of an environmental test conducted by or for the public body unless the test was done for a fee paid by the third party.

22(4) Subject to section 34 and any other exception provided for in this Act, the head of a public body may disclose a record that contains information described in subsection (1) or (2) if, in the opinion of the head, the private interest of the third party in non-disclosure is clearly outweighed by the public interest in disclosure for the purposes of

- (a) improved competition, or
- (b) government regulation of undesirable trade practices.

22(5) Subject to section 34 and any other exception provided for in this Act, the head of a public body shall disclose a record that contains information described in subsection (1) or (2) if, in the opinion of the head, the private interest of the third party in non-disclosure is clearly outweighed by the significant public interest in disclosure for the purposes of public health or safety or protection of the environment.

28(1) The head of a public body may refuse to disclose to an applicant information, including personal information about that person, if disclosure could reasonably be expected to

- (a) threaten or harm the mental or physical health or the safety of another person,
- (b) result, in the opinion of a duly qualified physician, psychologist or other appropriate expert, in serious harm to the applicant's mental or physical health or safety, or
- (c) threaten public safety.

28(2) Despite any provision of this Act, whether or not a request for access is made, the head of a public body shall, without delay, disclose to the public, to an affected group of people or to an applicant, information about a risk of significant harm to the

environment or to the health or safety of the public or a group of people, the disclosure of which is clearly in the public interest.

28(3) Before disclosing information under subsection (2), the head of a public body shall, where practicable, notify any person to whom the information relates.

28(4) If it is not practicable to comply with subsection (3), the head of the public body shall mail a notice of disclosure in the form determined by the Minister to the last known address of the person.

VI. Newfoundland and Labrador

Access to Information and Protection of Privacy Act, S.N.L. 2002 c. A-1.1;
available at http://www.canlii.org/en/nl/laws/stat/snl-2002-c-a-1.1/latest/snl-2002-c-a-1.1.html#27_

2. In this Act

- (q) "record" means a record of information in any form, and includes information that is written, photographed, recorded or stored in any manner, but does not include a computer program or a mechanism that produced records on any storage medium;

3.(1)The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by

- (a) giving the public a right of access to records;
- (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves;
- (c) specifying limited exceptions to the right of access;
- (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies; and
- (e) providing for an independent review of decisions made by public bodies under this Act.

(2) This Act does not replace other procedures for access to information or limit access to information that is not personal information and is available to the public.

7.(1)A person who makes a request under section 8 has a right of access to a record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information exempted from disclosure under this Act, but if it is reasonable to sever that information from the record, an applicant has a right of access to the remainder of the record. ...

27.(1) The head of a public body shall refuse to disclose to an applicant information

- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of a third party;
- (b) that is supplied, implicitly or explicitly, in confidence; and
- (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
 - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
 - (iii) result in undue financial loss or gain to any person or organization, or
 - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

(2) The head of a public body shall refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

- (3) Subsections (1) and (2) do not apply where
- (a) the third party consents to the disclosure; or
 - (b) the information is in a record that is in the custody or control of the Provincial Archives of Newfoundland and Labrador or the archives of a public body and that has been in existence for 50 years or more.

31.(1) Whether or not a request for access is made, the head of a public body shall, without delay, disclose to the public, to an affected group of people or to an applicant, information about a risk of significant harm to the environment or to the health or safety of the public or a group of people, the disclosure of which is clearly in the public interest.

(2) Subsection (1) applies notwithstanding a provision of this Act.

(3) Before disclosing information under subsection (1), the head of a public body shall, where practicable, notify a third party to whom the information relates.

(4) Where it is not practicable to comply with subsection (3), the head of the public body shall mail a notice of disclosure in the form set by the minister responsible for this Act to the last known address of the third party.

VII. Northwest Territories

Access To Information And Protection Of Privacy Act, S.N.W.T. 1994, c. 20; available at http://action.attavik.ca/home/justice-gn/attach-en_conlaw_prediv/Type002.pdf

1. The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by

- (a) giving the public a right of access to records held by public bodies;
- (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves held by public bodies;
- (c) specifying limited exceptions to the rights of access;
- (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies; and
- (e) providing for an independent review of decisions made under this Act.

2. In this Act,

"record" means a record of information in any form and includes information that is written, photographed, recorded or stored in any manner, but does not include a computer program or other mechanism that produces records;

5. (1) A person who makes a request under section 6 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under Division B of this Part, but where that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

24. (1) Subject to subsection (2), the head of a public body shall refuse to disclose to an applicant

- (a) information that would reveal trade secrets of a third party;
- (b) financial, commercial, scientific, technical or labour relations information
 - (i) obtained in confidence, explicitly or implicitly, from a third party, or
 - (ii) that is of a confidential nature and was supplied by a third party in compliance with a lawful requirement;
- (c) information the disclosure of which could reasonably be expected to
 - (i) result in undue financial loss or gain to any person,
 - (ii) prejudice the competitive position of a third party,
 - (iii) interfere with contractual or other negotiations of a third party, or
 - (iv) result in similar information not being supplied to a public body;
- (d) information about a third party obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax;
- (e) a statement of a financial account relating to a third party with respect to the provision of routine services by a public body;
- (f) a statement of financial assistance provided to a third party by a prescribed corporation or board; or
- (g) information supplied by a third party to support an application for financial assistance mentioned in paragraph (f).

- (2) A head of a public body may disclose information described in subsection (1)
- (a) with the written consent of the third party to whom the information relates; or
 - (b) if an Act or regulation of the Northwest Territories or Canada authorizes or requires the disclosure.

VIII. Nova Scotia

Freedom of Information and Protection of Privacy Act, S.N.S 1993, c.5; available at <http://canlii.com/en/ns/laws/stat/sns-1993-c-5/latest/sns-1993-c-5.html>.

- 2 The purpose of this Act is
- (a) to ensure that public bodies are fully accountable to the public by
 - (i) giving the public a right of access to records,
 - (ii) giving individuals a right of access to, and a right to correction of, personal information about themselves,
 - (iii) specifying limited exceptions to the rights of access,
 - (iv) preventing the unauthorized collection, use or disclosure of personal information by public bodies, and
 - (v) providing for an independent review of decisions made pursuant to this Act; and
 - (b) to provide for the disclosure of all government information with necessary exemptions, that are limited and specific, in order to
 - (i) facilitate informed public participation in policy formulation,
 - (ii) ensure fairness in government decision-making,
 - (iii) permit the airing and reconciliation of divergent views;
 - (c) to protect the privacy of individuals with respect to personal information about themselves held by public bodies and to provide individuals with a right of access to that information. *1993, c. 5, s. 2 .*

3 (1) In this Act,

- (k) "record" includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records;

5 (1) A person has a right of access to any record in the custody or under the control of a public body upon complying with Section 6.

(2) The right of access to a record does not extend to information exempted from disclosure pursuant to this Act, but if that information can reasonably be severed from the record an applicant has the right of access to the remainder of the record.

(2A) Subject to subsection (2B), notwithstanding anything contained in this Act, where the record is an executed contract

- (a) in which provision is made for
 - (i) in the case of an agreement executed by the Province, the Province,
 - (ii) in the case of an agreement executed by a board, commission, foundation, agency, tribunal, association or other body of persons, within the meaning of subclause (i) of clause (j) of Section 3, the board, commission, foundation, agency, tribunal, association or other body of persons, or
 - (iii) in the case of an agreement executed by a local public body, the local public body,
 to make a substantial transfer of risk to a person, including risk related to the operation or financing, or both, of government activities; and

- (b) that is, or is in a class of contracts that is designated, before or within ninety days of the execution of the contract
 - (i) by regulations by the Governor in Council, where the contract is executed by the Province,
 - (ii) by the legal decision-making authority by which a board, commission, foundation, agency, tribunal, association or other body of persons, within the meaning of subclause (i) of clause (j) of Section 3, acts where the contract is executed by that board, commission, foundation, agency, tribunal, association or other body of persons, or
 - (iii) the legal decision-making authority by which a local public body acts where the contract is executed by that local public body,
 the right of access extends to any information in the contract that, but for this subsection, would be exempted from disclosure pursuant to this Act.

(2B) Subsection (2A) does not apply in respect of any information in the contract, to which that subsection refers,

- (a) respecting trade secrets;
- (b) respecting the financial and business information of the person to whom that subsection refers; and
- (c) the disclosure of which may reasonably be expected to endanger the safety or health of the public, a person or a group of persons.

(3) Nothing in this Act restricts access to information provided by custom or practice prior to this Act coming into force.

21 (1) The head of a public body shall refuse to disclose to an applicant information

- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of a third party;
- (b) that is supplied, implicitly or explicitly, in confidence; and
- (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
 - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
 - (iii) result in undue financial loss or gain to any person or organization, or
 - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour-relations dispute.

(2) The head of a public body shall refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

(3) The head of a public body shall disclose to an applicant a report prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an enactment.

(4) Subsections (1) and (2) do not apply if the third party consents to the disclosure.

31(1) Whether or not a request for access is made, the head of a public body may disclose to the public, to an affected group of people or to an applicant information

(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people; or

(b) the disclosure of which is, for any other reason, clearly in the public interest.

(2) Before disclosing information pursuant to subsection (1), the head of a public body shall, if practicable, notify any third party to whom the information relates.

(3) Where it is not practicable to comply with subsection (2), the head of the public body shall mail a notice of disclosure in the prescribed form to the last known address of the third party.

(4) This Section applies notwithstanding any other provision of this Act. *1993, c. 5, s. 31.*

IX. Nunavut

Access To Information And Protection Of Privacy Act, S.N.W.T. (Nu.) 1994, c. 20; available at: <http://www.canlii.org/en/nu/laws/stat/snwt-nu-1994-c-20/latest/snwt-nu-1994-c-20.html>.

1. The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by
 - (a) giving the public a right of access to records held by public bodies;
 - (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves held by public bodies;
 - (c) specifying limited exceptions to the rights of access;
 - (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies; and
 - (e) providing for an independent review of decisions made under this Act.

2. In this Act,

"record" means a record of information in any form and includes information that is written, photographed, recorded or stored in any manner, but does not include a computer program or other mechanism that produces records;

5.(1) A person who makes a request under section 6 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under Division B of this Part, but where that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record. ...

24.(1) Subject to subsection (2), the head of a public body shall refuse to disclose to an applicant

- (a) information that would reveal trade secrets of a third party;
- (b) financial, commercial, scientific, technical or labour relations information
 - (i) obtained in confidence, explicitly or implicitly, from a third party, or
 - (ii) that is of a confidential nature and was supplied by a third party in compliance with a lawful requirement;
- (c) information the disclosure of which could reasonably be expected to
 - (i) result in undue financial loss or gain to any person,
 - (ii) prejudice the competitive position of a third party,
 - (iii) interfere with contractual or other negotiations of a third party, or
 - (iv) result in similar information not being supplied to a public body;
- (d) information about a third party obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax;
- (e) a statement of a financial account relating to a third party with respect to the provision of routine services by a public body;
- (f) a statement of financial assistance provided to a third party by a prescribed corporation or board; or
- (g) information supplied by a third party to support an application for financial assistance mentioned in paragraph (f).

- (2) A head of a public body may disclose information described in subsection (1)
- (a) with the written consent of the third party to whom the information relates; or
 - (b) if an Act or regulation of Nunavut or Canada authorizes or requires the disclosure.

X. Ontario

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31;
 available at http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90f31_e.htm

1. The purposes of this Act are,
 - (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,
 - (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of government information should be reviewed independently of government; and
 - (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

2.(1) In this Act,

“record” means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
- (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; (“document”)

11.(1) Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

(2) Before disclosing a record under subsection (1), the head shall cause notice to be given to any person to whom the information in the record relates, if it is practicable to do so.

(3) The notice shall contain,

- (a) a statement that the head intends to release a record or a part of a record that may affect the interests of the person;
- (b) a description of the contents of the record or part that relate to the person; and
- (c) a statement that if the person makes representations forthwith to the head as to why the record or part thereof should not be disclosed, those representations will be considered by the head.

(4) A person who is given notice under subsection (2) may make representations forthwith to the head concerning why the record or part should not be disclosed.

17. (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute. .

(2) A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

(3) A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure.

23. An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, Chapter M.56

1. The purposes of this Act are,
 - (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,
 - (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
 - (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

2. (1) In this Act,

“record” means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a

sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

- (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; ("document")

5. (1) Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

(2) Before disclosing a record under subsection (1), the head shall cause notice to be given to any person to whom the information in the record relates, if it is practicable to do so.

(3) The notice shall contain,

- (a) a statement that the head intends to release a record or a part of a record that may affect the interests of the person;
- (b) a description of the contents of the record or part that relate to the person; and
- (c) a statement that if the person makes representations forthwith to the head as to why the record or part should not be disclosed, those representations will be considered by the head.

(4) A person who is given notice under subsection (2) may make representations forthwith to the head concerning why the record or part should not be disclosed.

10.(1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

(2) A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure.

16. An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

XI. Prince Edward Island

Freedom of Information and Protection of Privacy Act, R.S.P.E.I. 1988, c. F-15.01; available at: http://www.gov.pe.ca/law/statutes/pdf/f-15_01.pdf.

1. In this Act
 - (l) "record" means a record of information in any form and includes notes, images, audiovisual recordings, x-rays, 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;
2. The purposes of this Act are
 - (a) to allow any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions as set out in this Act;
 - (b) to control the manner in which a public body may collect personal information from individuals, to control the use that a public body may make of that information and to control the disclosure by a public body of that information;
 - (c) to allow individuals, subject to limited and specific exceptions as set out in this Act, a right of access to personal information about themselves that is held by a public body;
 - (d) to allow individuals a right to request corrections to personal information about themselves that is held by a public body; and
 - (e) to provide for independent reviews of decisions made by public bodies under this Act and the resolution of complaints under this

6.(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record. ...

- 14.(1) Subject to subsection (2), the head of a public body shall refuse to disclose to an applicant information
 - (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of a third party;
 - (b) that is supplied, explicitly or implicitly, in confidence; and
 - (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of a third party,

- (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
- (iii) result in undue financial loss or gain to any person or organization, or
- (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

(2) The head of a public body shall refuse to disclose to an applicant information about a third party that was collected on a tax return or collected for the purpose of determining tax liability or collecting a tax.

- (3) Subsections (1) and (2) do not apply if
- (a) the third party consents to the disclosure;
 - (b) an enactment of Prince Edward Island or Canada authorizes or requires the information to be disclosed;
 - (c) the information relates to a non-arm's length transaction between a public body and another party; or
 - (d) the information is in a record that is in the custody or under the control of the Public Archives and Records Office or the archives of a public body and has been in existence for 50 years or more.

30. (1) Whether or not a request for access is made, the head of a public body shall without delay, disclose to the public, to an affected group of people, to any person or to an applicant

- (a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant; or
- (b) information the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

(3) Before disclosing information under subsection (1), the head of a public body shall where practicable

- (a) notify any third party to whom the information relates;
- (b) give the third party an opportunity to make representations relating to the disclosure; and
- (c) notify the Commissioner.

(4) If it is not practicable to comply with subsection (3), the head of a public body shall mail a notice of disclosure in the prescribed form

- (a) to the last known address of the third party; and
- (b) to the Commissioner.

XII. Quebec

An Act respecting access to documents held by public bodies and the Protection of personal information, R.S.Q. c. A-2.1; available at <http://www.canlii.org/en/qc/laws/stat/rsq-c-a-2.1/latest/rsq-c-a-2.1.html>

1. This Act applies to documents kept by a public body in the exercise of its duties, whether it keeps them itself or through the agency of a third party.

This Act applies whether the documents are recorded in writing or print, on sound tape or film, in computerized form, or otherwise.

9. Every person has a right of access, on request, to the documents held by a public body.

The right does not extend to personal notes written on a document or to sketches, outlines, drafts, preliminary notes or other documents of the same nature.

23. No public body may release industrial secrets of a third person or confidential industrial, financial, commercial, scientific, technical or union information supplied by a third person and ordinarily treated by a third person as confidential, without his consent.

24. No public body may release information supplied by a third person if its disclosure would likely hamper negotiations in view of a contract, result in losses for the third person or in considerable profit for another person or substantially reduce the third person's competitive margin, without his consent.

25. A public body, before releasing industrial, financial, commercial, scientific, technical or union information supplied by a third person, must give him notice, in accordance with section 49, of the release to enable him to submit his observations unless the information was supplied under an Act that provides for the release of information, or unless the third person has waived the notice by consenting to the release of the information or otherwise.

27. If, as the likely result of the disclosure of information, a mandate or a strategy concerning the negotiation of a collective agreement or a contract would be revealed, a public body may refuse to release the information, for a period of eight years from the opening of the negotiations.

41.1. The restrictions set out in this division, except those described in sections 28, 28.1, 29, 30, 33, 34 and 41, do not apply to information that reveals or confirms the existence of an immediate hazard to the life, health or safety of a person or a serious or irreparable violation of the right to environmental quality, unless its disclosure would likely seriously interfere with measures taken to deal with such a hazard or violation.

Those restrictions, except the restriction set out in section 28 and, in the case of a document filed by or for the Auditor General, the restriction set out in section 41, do not apply to information concerning the quantity, quality or concentration of

contaminants emitted, released, discharged or deposited by a source of contamination, or concerning the presence of a contaminant in the environment.

In the case of information supplied by a third person and referred to in the first paragraph, the person in charge must give that third person notice of a decision granting access to the information. The decision is executory despite section 49.

41.2. A public body may release information to which a restriction of the right of access under section 23, 24, 28, 28.1 or 29 applies in the following cases:

- (1) to its attorney if the information is necessary to prosecute an offence under an Act administered by the body, or to the Director of Criminal and Penal Prosecutions if the information is necessary to prosecute an offence under an Act applicable in Québec;
- (2) to its attorney, or to the Attorney General if the latter is acting as the body's attorney, if the information is necessary for the purposes of judicial proceedings other than those referred to in paragraph 1;
- (3) to a body responsible by law for the prevention, detection or repression of crime or statutory offences, if the information is necessary to prosecute an offence under an Act applicable in Québec;
- (4) to a person or body if the release of information is necessary for the application of an Act in Québec, whether or not the law explicitly provides for the release of the information;
- (5) to a public body, in the case of information referred to in section 23 or 24, if the release of information is necessary for the purposes of a service to be provided to a third person; and
- (6) to a person or body if the release of information is necessary for carrying out a mandate or performing a contract for work or services entrusted to that person or body by the public body.

In the case referred to in subparagraph 6 of the first paragraph, the public body must

- (1) see that the mandate or contract is in writing; and
- (2) specify in the mandate or contract which provisions of this Act apply to the information released to the mandatary or the person performing the contract, and the measures to be taken by the mandatary or person to ensure that the information is not used except for carrying out the mandate or performing the contract and that it is not kept by the person or body after the expiry of the mandate or contract.

The second paragraph does not apply if the mandatary or person performing the contract is a member of a professional order. Subparagraph 2 of the second paragraph does not apply if the mandatary or person performing the contract is another public body.

In addition, a police force may release to another police force information to which a restriction to the right of access set out in section 23, 24, 28, 28.1 or 29 applies.

However, the application of this section must not reveal a confidential source of information or the industrial secrets of a third person.

41.3. If information referred to in section 23 or 24 is released under the first paragraph of section 41.2, the person in charge of access to documents within the public body must record the release in a register the person keeps for that purpose.

XIII. Saskatchewan

Freedom of Information and Protection of Privacy Act, S.S. 1990-91, c. F-22.01; available at: <http://canlii.com/en/sk/laws/stat/ss-1990-91-c-f-22.01/latest/ss-1990-91-c-f-22.01.html>

2(1) In this Act:

- (i) "record" means a record of information in any form and includes information that is written, photographed, recorded or stored in any manner, but does not include computer programs or other mechanisms that produce records;

4. This Act:

- (a) complements and does not replace existing procedures for access to government information or records;
- (b) does not in any way limit access to the type of government information or records that is normally available to the public;
- (c) does not limit the information otherwise available by law to a party to litigation;
- (d) does not affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents;
- (e) does not prohibit the transfer, storage or destruction of any record in accordance with any other Act or any regulation;
- (f) does not prevent access to a registry operated by a government institution where access to the registry is normally allowed to the public.

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution.

19(1) Subject to Part V and this section, a head shall refuse to give access to a record that contains:

- (a) trade secrets of a third party;
- (b) financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution by a third party;
- (c) information, the disclosure of which could reasonably be expected to:
 - (i) result in financial loss or gain to;
 - (ii) prejudice the competitive position of; or
 - (iii) interfere with the contractual or other negotiations of;
 a third party;
- (d) a statement of a financial account relating to a third party with respect to the provision of routine services from a government institution;
- (e) a statement of financial assistance provided to a third party by a prescribed Crown corporation that is a government institution; or
- (f) information supplied by a third party to support an application for financial assistance mentioned in clause (e).

(2) A head may give access to a record that contains information described in subsection (1) with the written consent of the third party to whom the information relates.

- (3) Subject to Part V, a head may give access to a record that contains information described in subsection (1) if:
- (a) disclosure of that information could reasonably be expected to be in the public interest as it relates to public health, public safety or protection of the environment; and
 - (b) the public interest in disclosure could reasonably be expected to clearly outweigh in importance any:
 - (i) financial loss or gain to;
 - (ii) prejudice to the competitive position of; or
 - (iii) interference with contractual or other negotiations of; a third party.

XIV. Yukon

Access to Information and Protection of Privacy Act, R.S.Y. 2002, c. 1;

available at: <http://www.gov.yk.ca/legislation/acts/atipp.pdf>.

1(1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by

- (a) giving the public a right of access to records;
- (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves;
- (c) specifying limited exceptions to the rights of access;
- (d) preventing the unauthorized collection, use, or disclosure of personal information by public bodies; and
- (e) providing for an independent review of decisions made under this Act.

(2) This Act does not replace other procedures for access to information or limit in any way access to information that is not personal information and is available to the public independently of this Act.

3 In this Act,

“record” includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other process or mechanism that produces records;

5(1) A person who makes a request under section 6 has a right of access to any record in the custody of or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information that is excepted from disclosure under this Part, but if that information can reasonably be separated or obliterated from a record an applicant has the right of access to the remainder of the record.

24(1) A public body must refuse to disclose to an applicant information

- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of a third party;
- (b) that is supplied, implicitly or explicitly, in confidence; and
- (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position, or interfere significantly with the negotiating position of the third party,
 - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
 - (iii) result in undue financial loss or gain to any person or organization, or
 - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

(2) A public body must refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

(3) Subsections (1) and (2) do not apply if the third party consents to the disclosure.

(4) Subsection (2) does not apply to records under the *Assessment and Taxation Act* that describe a property and the assessment of the property.

28(1) Despite any other provision of this Act, a public body must disclose information to the public or an affected group of people if the public body has reasonable grounds to believe that the information would reveal the existence of a serious environmental, health, or safety hazard to the public or group of people.

(2) Before disclosing information under subsection (1), the public body must, if practicable, notify

- (a) any third party to whom the information relates; and
- (b) the commissioner.

(3) If it is not practicable to comply with subsection (2), the public body must mail a notice of disclosure in the prescribed form

- (a) to the last known address of the third party; and
- (b) to the commissioner.