

THE IMPACT OF THE FOIP ACT ON THE PRACTICE OF PSYCHOLOGY IN ALBERTA

Psychologists working in Alberta need to be aware of how the Freedom of Information and Protection of Privacy (FOIP) Act applies to their practice. This article highlights the sections of the Act that psychologists who provide services for public bodies should be familiar with. All Alberta psychologists should also review the legislation and become familiar with all of its provisions.

The FOIP Act has a dual purpose. First, it creates rights of access to the records of public bodies. Second, it establishes the conditions and obligations that public bodies must meet to protect the privacy of individuals whose personal information is in their custody or under their control.

Psychologists who are employed by or on contract to a school board, college, university or health care region are therefore subject to the provisions of this Act, as are psychologists who provide contract services to agencies such as the Workers' Compensation Board or Alberta Children's Services. However, psychologists whose work is reimbursed directly by a client or a private insurance plan are not subject to the Act's provisions.

SIDEBAR

Definitions

"Public bodies" include educational bodies such as schools and health care bodies such as the Alberta Mental Health board and hospitals.

"Employees of a public body" include persons who perform a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body.

Will you be notified of a FOIP request when you are considered a third party under the Act and your report is in the custody of a public body?

Your records of group therapy and marital counseling are just two examples of records that may contain third party information. The FOIP Act requires a public body to give the third party written notice of its intention to disclose such a record, and to provide an opportunity for a "consultation period." During the consultation period, the parties should discuss why they believe certain records should or should not be disclosed. The public body may be able to convince the third party to agree to the disclosure of the records, or the third party may be able to convince the public body that the record should be withheld under an exception to disclosure under the Act.

If information in a record is excepted from disclosure, then it becomes necessary to consider whether that information can reasonably be severed from the record and access granted to the remainder of the record.

Under Section 29(1) of the FOIP Act, a public body must give written notice to a third party when the public body is considering giving access to a record that may contain information that affects the interests of a third party, either under Section 15, "Disclosure harmful to business interests of a third party" or Section 16, "Disclosure harmful to personal privacy."

Does a public body have any discretion about what information it will disclose to an applicant?

Section 16 of the Act provides a public body with a possible basis for refusal to disclose personal information: "if the disclosure would be an unreasonable invasion of a third party's personal privacy." Section 17 also deals with discretionary disclosure. This section refers to cases where disclosing information would be harmful to the safety of an individual or of the public.

Can an individual obtain information about his or her actual tests and test protocols?

In many cases, only a trained professional can interpret psychological tests and test protocols. Consequently, when an individual asks a public body for access to his or her record and part of that record contains psychological testing, the public body may refuse to disclose to an applicant information relating to

- (a) testing or auditing procedures or techniques,
- (b) details of specific tests to be given or audits to be conducted, or
- (c) standardized tests used by a public body, including intelligence tests,

if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits. (section 25)

A psychological report can usually be released separately from the actual tests or test protocols. Occasionally, tests may be found to be within the public domain, for example, information that is readily available on the Internet.

As well, section 17(2) states: "The head of a public body may refuse to disclose to an applicant personal information about the applicant if, in the opinion of a physician, a chartered psychologist or a psychiatrist or any other appropriate expert, depending on the circumstances of the case, the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's health or safety."

Under section 17(2), on the request of the individual who is asking for access to his or her record, the public body can ask either the psychologist involved or an independent psychologist for advice and guidance about whether or not to disclose the information.

What happens if a psychological assessment indicates that an individual has a desire to harm others?

Some information must be disclosed in the public interest.

Section 31(1) states: "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 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 information the disclosure of which is, for any other reason, clearly in the public interest.”

Section 31(1) therefore applies when a psychologist who is employed by a public body becomes aware that an individual he or she is treating intends to harm others through violent means and the psychologist believes that the individual has every intent of carrying through with these actions. The psychologist may wish to discuss the situation and process with knowledgeable persons such as the psychologist’s supervisor and the FOIP coordinator.

Since the application of the FOIP Act varies significantly with each individual case and circumstance, psychologists employed by a public body will need to consult on these matters with experts on their staff and possibly with legal counsel.

Note: Other laws that affect psychologists, such as the Psychology Professions Act, the Mental Health Act, the School Act, the Hospitals Act, the Child Welfare Act and the Protection for Persons in Care Act. As well, new provincial and federal legislation that is being enacted will affect all health professionals, including psychologists: the provincial Health Information Act (HIA), the Health Professions Act and the federal Personal Information Protection and Electronic Documents Act. Also, private sector health legislation may soon be introduced in Alberta.

For More Information

The office of the Information and Privacy Commissioner publishes Orders, Practice Notes and Investigation Reports. For issues that pertain specifically to the role of the Commissioner's office, please call 780-422-6860. A Portfolio Officer will be pleased to answer your questions.

Alberta Government Services, Information Management and Privacy Branch, publishes FOIP Bulletins and has primary responsibility for the FOIP Act. For issues and advice pertaining to FOIP, please contact them at 780-427-5848.

Reference:

Freedom of Information and Protection of Privacy Act, Province of Alberta, Consolidated October 1, 1999

"Freedom of Information and Protection of Privacy Guidelines and Practices," Information Management and Privacy, Alberta Municipal Affairs, September 2000

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