MAKING THE FOIP ACT CLEAR, USER-FRIENDLY & PRACTICAL

Submission to the 2013
Government of Alberta
FOIP Act Review

Office of the Information and
Privacy Commissioner of Alberta

In my submission to the 2013 FOIP Act Review, *Becoming a Leader in Access and Privacy,* I provided ideas, suggestions and recommendations for consideration in making Alberta's *Freedom of Information and Protection of Privacy Act* (the FOIP Act) a leading example to other jurisdictions in terms of access to information and protection of privacy legislation. In this second submission, I make comments and recommendations on technical aspects of the FOIP Act.

This submission responds to the theme "Making the FOIP Act Clear and User Friendly" that was raised in the *Discussion Guide* prepared by Service Alberta for the FOIP Act Review. I have, however, expanded the theme to "Making the FOIP Act Clear, User Friendly & Practical". It is important that legislation be written in clear and understandable terms. However, it is equally important that legislation be written to ensure that it can be applied practically.

As I said in *Becoming a Leader in Access and Privacy,* my Office has interpreted, mediated, investigated and issued orders, reports and decisions on hundreds of matters under the FOIP Act over the past 17 years. Our work and experiences have provided us with knowledge of the FOIP Act that is unique and comprehensive. In particular, we have an understanding of the practical application of the FOIP Act.

The FOIP Act is a good law and it has served Albertans well for the past 17 years. The current FOIP Act Review provides an opportunity to clarify and make amendments, as required, to strengthen and enable the FOIP Act to address the access to information and privacy issues of today's environment.

In releasing *Becoming a Leader in Access and Privacy*, I said that I hoped my Office would be consulted during the next phases of the FOIP Act Review and provided an opportunity to comment on any proposed amendments to the FOIP Act. I would like to reiterate this comment as I believe my Office has extensive knowledge of the FOIP Act and its application to the public sector.

Jill Clayton
Information and Privacy Commissioner
Office of the Information and Privacy Commissioner of Alberta
July 2013

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INTRODUCTION

The *Freedom of Information and Protection of Privacy Act* (the FOIP Act) applies to over 1,000 "public bodies," including:

- government ministries, boards and agencies;
- universities and colleges;
- school boards and charter schools;
- health care bodies; and
- local government bodies such as:

    - police services,
    - police commissions,
    - municipalities,
    - metis settlements,
    - improvement districts,
    - housing management bodies,
    - library boards, and
    - any board, committee, commission, panel, agency or corporation created or owned by a local government body and all members or officers are appointed or chosen by the local government body.

Given the breadth of the application of the FOIP Act and the diverse range of expertise and knowledge of the legislation by public bodies, it is essential that the FOIP Act be clear, understandable and practical in application.

GENERAL RECOMMENDATIONS

Cross-sectoral partnerships

There is an increasing movement towards citizen-centred service delivery involving cross-sectoral partners (public, private and health sectors). I am concerned that the personal information of Albertans may not be protected in situations where one of the partners is a non-profit organization that is not subject to privacy legislation.

Public bodies are accountable under the FOIP Act for the collection, use and disclosure of personal information by their "employees".

Health custodians are subject to the *Health Information Act* (HIA) and private sector organizations are subject to the *Personal Information Protection Act* (PIPA).

However, only certain non-profit organizations are fully subject to PIPA. Non-profit organizations that are incorporated under the *Societies Act* or the *Agricultural Societies Act,* or are registered under Part 9 of the *Companies Act*, are subject to PIPA only when they are collecting, using or disclosing personal information in connection with a commercial activity. It should be noted that in its 2007 Final Report, the all-party Select Special PIPA Review Committee recommended that all non-profit organizations be fully subject to PIPA.

If such a non-profit organization is a partner in a multi-partner service program, is not providing a service on behalf of a public body (e.g. as a contractor) and is not undertaking a commercial activity, the collection, use and disclosure of personal information by the organization would not be protected by privacy legislation.

The Standing Committee on Health (the Standing Committee) considered this issue in its 2010 review of the FOIP Act. In its Final Report to the Legislature, the Standing Committee recommended that the definition of "employee" under section 1(e) of the FOIP Act be amended to read:

> *…"employee", in relation to a public body includes a person who performs a service for or in relation to or in connection with the public body as an appointee, volunteer or student or under a contract or agency relationship with a public body.*

On reflection, I do not believe that the recommendation is an appropriate solution. In my opinion, the best solution is to make all non-profit organizations fully subject to PIPA, as recommended by the 2007 Select Special PIPA Review Committee. In the meantime, a provision should be added to the FOIP Act making the public body responsible for the acts of the non-profit organization with respect to personal information that is shared between them when they are partners in a program or service.

Recommendation:

- Amend the FOIP Act to establish that when public bodies and non-profit organizations that are not subject to PIPA are sharing personal information as partners in cross-sectoral initiatives, the public bodies are responsible for the collection, use, disclosure and protection of that personal information by the non-profit organizations.

Section 14(1) – extending time limit for responding

Section 11(1) of the FOIP Act requires that public bodies respond to an access/correction request no later than 30 calendar days after receiving the request. However, the 30-day time limit may be extended under section 14.

Under section 14(1), a public body may grant itself an additional 30-day extension in certain circumstances. If a public body requires an extension longer than the additional 30 days, it must submit an extension request to me for approval.

The circumstances under section 14(1) do not include unanticipated situations such as the recent flooding and recovery situation in Calgary or the closure of the Alberta Records Centre in February 2013 due to structural concerns.

Therefore, public bodies have no authority to grant themselves an additional 30-day extension under section 14(1) if they are unable to access records in these situations. Furthermore, I have no authority to grant time extensions under section 14(1) in these situations.

Recommendation:

- Amend section 14(1) to allow for extensions in unforeseen emergency or disaster situations.

Section 14(1) – time extensions that a public body can take on its own authority

Section 10(1) of the *Freedom of Information and Protection of Privacy Act* of British Columbia (BC) corresponds with Alberta's section 14(1).

However, the BC FOIP Act separates the additional 30-day extension that a public body may take on its own authority from the longer extensions that may be permitted by the Commissioner. This is different from section 14(1) of Alberta's FOIP Act which encompasses both the additional 30-day extension that a public body may take on its own authority and a longer extension that may be permitted by the Commissioner.

Separate provisions specific to extensions by public bodies and extensions by the Commissioner may provide greater clarity to public bodies that they may extend the time limits for response by an additional 30-day period on their own authority.

Recommendation:

- Amend section 14(1) to separate and clarify the extensions that a public body may take on its own authority from the longer extensions permitted by the Commissioner.

In addition, my Office has heard some public bodies interpret section 14(1) as permitting them to take a 30-day extension for each of the circumstances listed under section 14(1). For example: a public body may take one 30-day extension under section 14(1)(a) and another 30-day extension under section 14(1)(b). I believe this interpretation is contrary to the intent of the FOIP Act to ensure that requests are processed in a timely manner.

I prefer the wording in section 10(1) of the BC FOIP Act which states that a "public body may extend the time for responding to a request for up to 30 days if one or more of the following apply…".

Recommendation:

- Clarify that under section 14(1) a public body may only take one additional 30-day extension on its own authority.

Section 14(1)(c) and section 14(3) – third parties

Section 14(1)(c) allows the time limits for responding to an access/correction request to be extended if "more time is needed to consult with a third party or another public body before deciding whether to grant access to a record".

Section 14(3) states:

> 14(3) Despite subsection (1), where the head of a public body is considering giving access to a record to which section 30 applies, the head of the public body may extend the time for responding to the request for the period of time necessary to enable the head to comply with the requirements of section 31.

The consultation with a third party under section 14(1)(c) is different from the third party consultation process set out in section 14(3) of the FOIP Act which relates to sections 30 and 31.

In a footnote on page 4 of Order F2011-003, Commissioner Work stated:

> *Section 14(1)(c) refers to consultations with third parties. However, in my view, the third parties being referenced there are not those who may have interests under section 30(1), but rather are other third parties such as, for example, government organizations that are not public bodies under the Act.*

While the difference between section 14(1)(c) and section 14(3) was addressed in Order F2011-003, I believe it would be helpful to reinforce this in the FOIP Act. For instance, the reference to "a third party" in section 14(1)(c) could be replaced with other wording such as "another government, organization or agency" or words of that nature.

Recommendation:

- Amend section 14(1)(c) to replace "a third party" with other wording to minimize confusion with section 14(3).

Additionally, as noted above, section 14(3) relates to section 30 and section 31. The wording in sections 30 and 31 refers to "the record or part of the record". However, section 14(3) only refers to "the record". Since these provisions are related, the wording should be consistent to avoid confusion or misinterpretation.

Recommendation:

- Amend section 14(3) to read "where the head of a public body is considering giving access to a record **or part of a record** to which section 30 applies…".

Section 14(1)(d) – third party requests a review

Section 14(1)(d) allows a public body to extend the time limits for response on its own authority or with my permission if "a third party asks for a review under section 65(2) or 77(3)".

When a third party asks me for a review under section 65(2) of the FOIP Act, the timelines for that review are set out in section 69(6) of the FOIP Act. Under section 69(6), I am required to complete my review within 90 days after receiving the request for review unless I extend that time. Since a public body has limited say in the timelines required for completion of my review, the intent of section 14(1)(d) is unclear.

The 2009 edition of the *FOIP Guidelines and Practices* [page 65], prepared by Service Alberta, provides the following information about section 14(1)(d):

> *In order to allow time for the third party to ask the Commissioner to review the decision, an additional 20 days may be required…*

Section 65(2) of the FOIP Act gives a third party that has been notified under section 31 of a decision by a public body to release third party information the right to ask me to review that decision. Under section 66(2)(b), a third party must submit their request to me within 20 days after they are notified of the decision.

The 20-day period is also referenced in section 31(3) of the FOIP Act, which states that a public body must give written notification to both the third party and the applicant of its decision to give the applicant access to third party information, unless the third party asks for a review within 20 days after that notice is given.

In my opinion, there is a difference between allowing time for a third party to ask for a review (as stated in the *FOIP Guidelines and Practices*) and the wording of section 14(1)(d) which is "a third party asks for a review" (which implies that the third party request for review has been made to me).

Furthermore, as stated in Order F2011-003:

> *Sections 30/31 create a separate procedure and requirements for responding for a specific category of records – those which it is considering disclosing but which affect or may affect third party interests. This is necessary because for this latter category of records, access is not to be given despite a public body's decision to disclose, because the affected third parties must be given an opportunity to request a review by my office of the public body's decision before the records are actually released in accordance with the decision.* [para 11]

The requirements and timelines under section 30 and section 31 are mandatory. Public bodies are required to notify third parties and applicants as to the requirements and timelines. Given this, it may make sense to have a provision that states that the time limits for response to an applicant's request, in relation to records that affect or may affect third party interests, would be extended when a third party asks for a review (as opposed to an extension that is taken by a public body on its own authority or with permission from me). However, whether this provision is under section 14(1) or elsewhere in the FOIP Act should be reviewed. This provision must only be specific to the records that are the subject of the third party review. Release of records not related to the third party interests should not be delayed.

Recommendation:

- Consider the appropriate place for a provision stating the time limits for response in relation to records that affect or may affect a third party's interests are extended when a third party asks for a review.

Section 14(1) – time extensions taken by the OIPC as a public body

The Office of the Information and Privacy Commissioner (the OIPC) is a "public body" and subject to the FOIP Act except for records that are excluded under section 4(1)(d).

When the OIPC receives an access to information request for records that are not excluded under section 4(1)(d), I am required to respond in accordance with the time limits set out in section 11 and section 14.

Under section 14(1), as the head of the OIPC, I may take an additional 30-day extension (similar to other public bodies). As stated above, if public bodies require an extension that is longer than the additional 30-day period, they may come to me for permission and I issue my decision. However, there is no provision under section 14(1) that allows me to ask for an extension beyond the additional 30-day period.

Under section 75 of the FOIP Act, the Lieutenant Governor in Council may designate a judge of the Court of Queen's Bench of Alberta as an adjudicator on decisions or actions made by me as the head of the OIPC. I will make further comments about an adjudicator under section 75 later in my submission. But, at this point, I will describe the adjudicator's role in relation to my Office as similar to my role as Commissioner for other public bodies. Therefore, it seems reasonable that I would need to write to the adjudicator for extensions beyond the additional 30-day period. Currently, there is nothing under section 75 that relates to this matter.

It should also be noted that I cannot submit a time extension request unless an adjudicator is appointed – a process that can take more than 30 days. Consequently, there is a gap in the FOIP Act on this matter.

Recommendation:

- Clarify how time extensions beyond the additional 30-day period for the OIPC as a public body be handled.

Section 14(4)(c) – complaints about extensions

Section 14(4)(c) states that an applicant is to be informed of the right to make a complaint to "the Commissioner or to an adjudicator" about any time extensions taken with respect to their access/correction request.

Because of the wording in section 14(4)(c), this section may be interpreted to mean that when the Commissioner grants a public body permission to extend time for a response longer than 30 days, that decision is reviewable by an adjudicator. As explained below, this is incorrect.

An "adjudicator" is defined in section 1(a) of the FOIP Act as "a person designated under section 75," i.e. a judge of the Court of Queen's Bench who has been designated by Order in Council to act as the Commissioner in specified circumstances.

An adjudicator under section 75 reviews my decisions and actions when I am acting as the head of the OIPC as a public body. An adjudicator cannot review the decisions I make in my role as Commissioner; as expressly stated in section 75(2), an adjudicator "must not review an order of the Commissioner made under this Act."

The proper forum for review of my decisions as Commissioner is by way of application for judicial review to the Court. This is supported by the decision in *Alberta (Information and Privacy Commissioner) v. Alberta (Freedom of Information and Protection of Privacy Act Adjudicator)*, 2011, ABCA 36, where the Court of Appeal of Alberta stated:

> *[81]….I prefer the analysis of Smith J. of the British Columbia Superior Court acting as adjudicator in Mr. M. in which she held at para. 9:*
>
> > *The Commissioner has two distinct roles under the Act: (1) overseeing and administer the Act, and (2) acting as head of a public body. It is only the acts or omissions by the Commissioner in the latter capacity that are subject to review by an adjudicator. This is an important distinction because the bulk of the Commissioner's work, which includes monitoring compliance by other public bodies, investigating complaints and promoting public awareness of the Act, is subject only to judicial review and is not reviewable by an adjudicator…*

When I am reviewing a public body's request for an extension, I am acting as Commissioner and not as the head of a public body. Therefore, any decision to grant or deny a public body's request

for a time extension under section 14 of the FOIP Act is not a matter that can be reviewed by an adjudicator under section 75. As stated in the Court of Appeal of Alberta decision, the correct forum to hear this matter is judicial review.

However, when I, as head of the OIPC, take the permitted 30-day time extension in section 14(1) for an access request that has been made to the OIPC as a public body, I must comply with section 14(4)(c), as any other public body must, and inform the applicant that he or she has the right to make a complaint about the time extension. In this case, the complaint is to an adjudicator because I cannot act as Commissioner and review decisions I have made as head of a public body.

It is the Commissioner who reviews complaints about a public body's decision to grant itself a 30-day time extension on its own authority.

Recommendation:

- Amend section 14(4)(c) to clarify that an applicant's complaint about a decision of a public body to grant a time extension on its own authority is to be made to the Commissioner (unless the public body is the OIPC).

Section 30(5) – notice to applicant

Both sections 30 and 31 of the FOIP Act require that public bodies provide notice to applicants and third parties.

Section 30(1) and section 31(2) states that notices to the third party must be in writing. Section 31(3) also states that notice to the applicant must be in writing. However, there is no requirement that a notice to an applicant under section 30(5) must be in writing. This provision should be amended for consistency and clarity.

Recommendation:

- Amend section 30(5) to state that a notice to the applicant under this provision must be in writing.

Section 31 – release of third party records

Under section 31(3), a public body must wait 20 days after notice has been given to a third party and an applicant of its decision to disclose *before* it can release records to the applicant. This 20-day period allows a third party time to ask me for a review under section 65(2) of the public body's decision to disclose.

During the 2010 FOIP Act Review, the Standing Committee heard that this 20-day period is unnecessary in circumstances where the third party has consented to the disclosure and where there is no additional third party affected by the disclosure.

The Committee made the following recommendation in its November 2010 report:

> *That section 31 of the FOIP Act be amended to state that the 20-day requirement under section 31(3) does not apply when a third party has consented to the disclosure and the disclosure would not impact another third party.*

I would like to reiterate this recommendation to facilitate the timely release of records under the FOIP Act.

Recommendation:

- Amend section 31(3) in accordance with the recommendation of the Standing Committee on the 2010 FOIP Review.

Section 66 – how to ask for a review

Under section 66(2)(a)(i) of the FOIP Act, an individual must deliver their written request for review to the Commissioner within 60 days after being notified of a public body's decision. The difficulty with requesting a review pursuant to section 65(3) is that there is often no notification of a decision from a public body regarding a privacy breach. Furthermore, individuals may not realize their privacy has been breached until some time has elapsed from the actual incident.

Separating the time limits for submitting a privacy complaint from the 60-day period set out in section 66(2)(a)(i) with a provision similar to section 47(3) of the *Personal Information Protection Act* (PIPA) is a possible solution. Section 47(3) of PIPA reads:

> 47(3) A written complaint to the Commissioner about an organization must be delivered within a reasonable time.

Recommendation:

- Amend section 66(2) to require written complaints be delivered to my Office within a reasonable time.

Section 68 – mediation may be authorized

Section 68 gives me the discretion to authorize "a mediator" to investigate and try to settle any matter that is the subject of a request for review.

The intent of section 68 is to allow for dispute resolution outside of the formal adjudication process. The majority of matters that come to my Office are successfully resolved without requiring an inquiry or an order.

Section 68 encompasses both mediation and investigation, which are different types of dispute resolution. However, the header to this section only refers to mediation and the title of "mediator" does not include the investigative role that my staff may be required to fulfill.

For clarity, I suggest the wording of section 68 be amended to more accurately reflect the informal dispute resolution process in my Office.

Recommendation:

- Amend section 68 to reflect the informal dispute resolution process of my Office.

New provision – Commissioner's refusal to conduct or continue a review

Section 49.1 of PIPA allows me the discretion to refuse to conduct or continue a review in the following circumstances:

- the written request for review is frivolous or vexatious or is not made in good faith, or
- the circumstances warrant refusing to conduct or to continue a review.

I am mindful of the principles and rights set out in the FOIP Act. However, there are individuals who may use the FOIP Act in ways that are contrary to the spirit and intent of the law. The Legislature has recognized this in section 55(1) of the FOIP Act, which allows a public body to ask me for authorization to disregard certain requests.

I must ensure that my limited resources are allocated to matters that are proper and in accordance with the intentions of the Act.

Recommendation:

- Add a new provision to the FOIP Act similar to section 49.1 of PIPA.

Section 69(6) – time limit on reviews by the Commissioner

Section 69(6) requires that a review by my Office be completed within 90 days after receiving the request for review unless I extend that time limit.

In its November 2010 Final Report to the Legislature, the Standing Committee said:

> *…even if the Commissioner had unlimited resources, it would not be possible to complete a mediation/investigation, conduct an inquiry and issue an order within 90 days of receiving a request for review. When a matter goes to inquiry, the parties must be notified, providing them time to prepare their submissions, which are then provided to the Commissioner's office. Then the Commissioner must prepare and issue his decision. The Committee heard that this entire process requires more time than the 90 days allocated under section 69(6)…*

The Standing Committee recommended:

> *That section 69(6) of the FOIP Act be amended to match the one-year time limit in PIPA, with the ability to extend if required.*

Recommendation:

- Amend section 69(6) in accordance with the recommendation of the Standing Committee on the 2010 FOIP Review.

Division 2, Part 5 – clarifying the adjudicator's role relative to the Commissioner's legislative oversight role

As mentioned earlier in this submission, the Commissioner has two distinct roles which have been recognized by the Court of Appeal of Alberta: (1) overseeing and administering the FOIP Act, and (2) acting as head of a public body, i.e. the OIPC.[1]

As stated in section 75(2), an adjudicator is not permitted to review an order of the Commissioner made under the FOIP Act. It is only decisions, acts or failures to act by the Commissioner in her capacity as head of a public body that are subject to review by an adjudicator, not the decisions, acts or omissions that relate to the Commissioner's legislative oversight role.
In its November 2010 Final Report, the Standing Committee recommended:

> *That Division 2, Part 5, be amended to clarify that any decision, act or failure to act by the Commissioner in relation to his or her legislative oversight role is not reviewable by an adjudicator appointed under section 75.*

Recommendation:

- Amend Division 2, Part 5 in accordance with the recommendation of the Standing Committee on the 2010 FOIP Review.

[1] *Alberta (Information and Privacy Commissioner) v. Alberta (Freedom of Information and Protection of Privacy Act Adjudicator)*, 2011, ABCA 36

Section 84(1)(e) – exercise of rights by other persons

There is no minimum age specified in the FOIP Act. Therefore, children have rights similar to adults under the FOIP Act. In cases where a child is a minor, section 84(1)(e) of the FOIP Act permits the head of a public body to allow a guardian to exercise the minor's rights.

However, section 84(1)(e) does not contemplate the exercise of a minor's rights with respect to requesting a review by the Commissioner of a public body's decision regarding an access or correction request or improper collection, use or disclosure of personal information. In these situations, it is the Commissioner, not the head of a public body, that would permit a guardian to exercise the minor's right to request a review or file a complaint. The addition of the word "Commissioner" to section 84(1)(e) would clarify this matter.

In addition, consideration should be given to amending section 84(1)(e) to reflect the concept of a "mature minor", similar to section 104(1)(b) and (c) of the *Health Information Act* (HIA).

Recommendations:

- Amend section 84(1)(e) to include reference to "the Commissioner."
- Consider amending the section further to reflect the concept of a "mature minor," similar to HIA.

Section 97 – review of the FOIP Act

In its November 2010 Final Report to the Legislature, the Standing Committee recommended:

> *That section 97 of the FOIP Act be amended to provide for a further review of the Act in six calendar years.*

The FOIP Act is an act of general application of significant importance to Albertans. Legislating a commencement date or time period for subsequent reviews of the Act ensures that the legislation remains current and relevant. Not specifying a commencement date or time period for review leaves the review of the legislation to the will of the government of the day and puts the legislation at risk for not meeting the access to information and privacy needs of Albertans.

Recommendation:

- Amend section 97 of the FOIP Act in accordance with the recommendation of the Standing Committee on the 2010 FOIP Review.

RECOMMENDATIONS FOR HARMONIZATION WITH PIPA AND HIA

The following recommendations are to harmonize the FOIP Act with PIPA and HIA:

- Incorporate a provision, similar to section 38.1 of PIPA, into section 56 of the FOIP Act. Section 38.1 of PIPA states:

  > 38.1 If a legal privilege, including solicitor-client privilege, applies to information disclosed to the Commissioner on the Commissioner's request under section 37.1 or section 38, the legal privilege is not affected by the disclosure.

- Add a provision, similar to section 39(1.1) of PIPA, to section 57 of the FOIP Act. Section 39(1.1) of PIPA reads:

  > 39(1.1) The Commissioner and anyone acting for or under the direction of the Commissioner shall not give or be compelled to give evidence in a court or in any other proceeding in respect of any information obtained in performing their duties, powers and functions under this Act, except in the circumstances set out in subsection (1(a) to (c).

- Add a provision, similar to section 41(3.2) of PIPA, to section 59 of the FOIP Act. Section 41(3.2) of PIPA states:

  > 41(3.2) The Commissioner shall not disclose information under subsection (3.1) if the information is subject to solicitor-client privilege.

- Amend section 72(3)(a) to read the same as section 52(3)(a) of PIPA, which states:

  > Confirm that a duty imposed by this Act or the regulations has been performed or require that a duty imposed by this Act or the regulations be performed.

- Add the word "excuse" to section 72(3)(c), similar to section 52(3)(c) of PIPA:

  > Confirm, **excuse** or reduce a fee or order a refund, in the appropriate circumstances, including if a time limit is not met.

- Add a new provision under section 72(3) that is similar to section 52(3)(f) of PIPA, which states:

  > Confirm a decision of an organization to collect, use or disclose personal information.

- Add a provision similar to section 52(2)(b) of PIPA to section 72 of the FOIP Act. Section 52(2)(b) of PIPA allows me to:

  > Make an order that the Commissioner considers appropriate if, in the circumstances, an order under section 52(2)(a) would not be applicable.

- Delete section 74(5) for consistency with PIPA.

- Amend section 92 to remove the word "wilfully" from the offence provisions and to create a due diligence defence. The same amendments were made to the offence provisions in PIPA in 2010.

SUMMARY OF RECOMMENDATIONS

General recommendations

- Amend the FOIP Act to establish that when public bodies and non-profit organizations that are not subject to PIPA are sharing personal information as partners in cross-sectoral initiatives, the public bodies are responsible for the collection, use, disclosure and protection of that personal information by the non-profit organizations.

- Amend section 14(1) to allow for extensions in unforeseen emergency or disaster situations.

- Amend section 14(1) to separate and clarify the extensions that a public body may take on its own authority from the longer extensions permitted by the Commissioner.

- Clarify that under section 14(1) a public body may only take one additional 30-day extension on its own authority.

- Amend section 14(1)(c) to replace "a third party" with other wording to minimize confusion with section 14(3).

- Amend section 14(3) to read "where the head of a public body is considering giving access to a record **or part of a record** to which section 30 applies…".

- Consider the appropriate place for a provision stating the time limits for response in relation to records that affect or may affect a third party's interests are extended when a third party asks for a review.

- Clarify how time extensions beyond the additional 30-day period for the OIPC as a public body be handled.

- Amend section 14(4)(c) to clarify that an applicant's complaint about a decision of a public body to grant a time extension on its own authority is to be made to the Commissioner (unless the public body is the OIPC).

- Amend section 30(5) to state that a notice to the applicant under this provision must be in writing.

- Amend section 31(3) in accordance with the recommendation of the Standing Committee on the 2010 FOIP Review.

- Amend section 66(2) to require written complaints be delivered to my Office within a reasonable time.

- Amend section 68 to reflect the informal dispute resolution process of my Office.

- Add a new provision to the FOIP Act similar to section 49.1 of PIPA.

- Amend section 69(6) in accordance with the recommendation of the Standing Committee on the 2010 FOIP Review.

- Amend Division 2, Part 5 in accordance with the recommendation of the Standing Committee on the 2010 FOIP Review.

- Amend section 84(1)(e) to include reference to "the Commissioner."

- Consider amending the section further to reflect the concept of a "mature minor," similar to HIA.

- Amend section 97 of the FOIP Act in accordance with the recommendation of the Standing Committee on the 2010 FOIP Review.

Recommendations for harmonization with PIPA and HIA

- Incorporate a provision, similar to section 38.1 of PIPA, into section 56 of the FOIP Act. Section 38.1 of PIPA states:

  > 38.1 If a legal privilege, including solicitor-client privilege, applies to information disclosed to the Commissioner on the Commissioner's request under section 37.1 or section 38, the legal privilege is not affected by the disclosure.

- Add a provision, similar to section 39(1.1) of PIPA, to section 57 of the FOIP Act. Section 39(1.1) of PIPA reads:

  > 39(1.1) The Commissioner and anyone acting for or under the direction of the Commissioner shall not give or be compelled to give evidence in a court or in any other proceeding in respect of any information obtained in performing their duties, powers and functions under this Act, except in the circumstances set out in subsection (1(a) to (c).

- Add a provision, similar to section 41(3.2) of PIPA, to section 59 of the FOIP Act. Section 41(3.2) of PIPA states:

  > 41(3.2) The Commissioner shall not disclose information under subsection (3.1) if the information is subject to solicitor-client privilege.

- Amend section 72(3)(a) to read the same as section 52(3)(a) of PIPA, which states:

  > Confirm that a duty imposed by this Act or the regulations has been performed or require that a duty imposed by this Act or the regulations be performed.

- Add the word "excuse" to section 72(3)(c), similar to section 52(3)(c) of PIPA:

  > Confirm, **excuse** or reduce a fee or order a refund, in the appropriate circumstances, including if a time limit is not met.

- Add a new provision under section 72(3) that is similar to section 52(3)(f) of PIPA, which states:

  > Confirm a decision of an organization to collect, use or disclose personal information.

- Add a provision similar to section 52(2)(b) of PIPA to section 72 of the FOIP Act. Section 52(2)(b) of PIPA allows me to:

  > Make an order that the Commissioner considers appropriate if, in the circumstances, an order under section 52(2)(a) would not be applicable.

- Delete section 74(5) for consistency with PIPA.

- Amend section 92 to remove the word "wilfully" from the offence provisions and to create a due diligence defence. The same amendments were made to the offence provisions in PIPA in 2010.