



HANDLING FREEDOM OF INFORMATION REQUESTS

The Freedom of Information and Protection of Privacy Act ("FOIPPA"). SBC 1992 c.61 became law on October 4, 1993. Kwantlen Polytechnic University ("KPU"), along with other public bodies, came under the Act effective October 1994.

KPU must provide a legal right of access to records in the custody or under the control of the university, while at the same time prevent the unauthorized collection, use or disclosure of personal information. Responding to requests for access to records, while at the same time protecting individual privacy, is a basic responsibility of the KPU administration and an obligation on the part of all employees.

PRINCIPLES

The legislation aims to make public organizations more accountable to the public and to protect personal privacy by:

- giving the public a right of access to records in the custody of, or under the control of the university
- giving individuals a right of access to, and a right to request correction of personal information about themselves
- specifying limited exceptions to the right of access
- preventing the unauthorized collection, use, or disclosure of personal information
- providing for an independent review of decisions made under the Act

The president has final authority on access to information requests that are received by KPU but the FOI function is delegated to a Freedom of Information ("FOI") Coordinator. Decisions on access can be appealed to the Information and Privacy Commissioner through a request for review process that is also outlined in FOIPPA.

DEFINITIONS

Records

A record includes books, documents, maps, letters, papers, photos and any other item on which information is recorded or stored by graphic, electronic, mechanical or any other means.

With limited exceptions (outlined in Sec. 3(1) of the Act) such as teaching materials or research information, any record within the custody of and under the control of KPU comes within the scope of the Act.

Personal Information

Personal information is any information about an identifiable individual such as name, address, telephone number, race, origin, colour, political or religious beliefs, age, sex, sexual orientation, marital or family status, and any identifying number or symbol assigned to an individual. It includes an individual's personal history regarding finances, education, health, criminal record and employment. FOIPPA also extends this to include anyone else's opinion about the individual, as well as the individual's personal views or opinions, unless they are about someone else. This description of personal information is not exhaustive. There may be other types of information that, alone or in combination, would reveal the identity of a particular individual. The protection of personal information *does not extend* to business contact information or the title, function, salary or expenses of employees of public bodies such as KPU.

PROCEDURES

Handling Requests

A formal request under FOIPPA must be in writing.

When a request is received anywhere in the university, it should be forwarded to the FOI Coordinator, **as soon as possible, ideally within 3 days**. By law, KPU has 30 working days to respond to a request. Questions as to whether a specific request pertains to the Act should be referred to the FOI Coordinator, Office of General Counsel.

More often, the FOI Coordinator will contact a member of the administration, faculty or staff to request assistance with processing an FOI request that has been received.

Locating the Records

The FOI coordinator will work with program areas to identify the records that are responsive to the request and to determine how much time will be needed to locate, retrieve and produce the records. If the time needed to do this will exceed 3 hours, by law KPU may charge fees for the request based on a fee schedule prescribed by the Act. The FOI Coordinator will give the requestor an estimate prior to asking program areas to retrieve the records. If the requestor approves of the fees, the file moves forward. Ideally, the program area will locate and retrieve the responsive records within seven working days, once requested. Where records do not exist, this should be communicated to the FOI Coordinator as soon as possible.

Many of KPU's records are stored electronically (e.g. email or database files). In compliance with FOIPPA, information that is held in a format that is not desired by the applicant may nevertheless need to be transferred to a different format. Sub-section 6.2 of FOIPPA provides that:

...there is duty to create a record, providing this does not unreasonably interfere with the operations of the public body, and the record can be created using normal computer hardware, software and technical expertise.

Third Party Notice

Where an FOI request involves a third party's business interests or could potentially invade the personal privacy of a third party, that third party must be notified if the information is being considered for release. The applicant is notified and the 30 day time limit is tolled while the third party is given 20 working days to consider whether they have any objections to the release of the records identified.

The president, through the FOI Coordinator, is responsible for all decisions related to granting access to information, or for access being denied.

*There is no authority which permits an employee to grant or deny access to a record of a third party, **unless related to their employment and in furtherance of the 'need to know' policy.** Only information available under 'routine request' may avoid formal FOI access procedures. An example of "routine release" is when a student or employee is requesting access to their own records. If there is any question about access, even under "routine release", it should be referred to the FOI Coordinator.*

Exceptions

There are limited and specific circumstances under which the university may deny access to information. These are called exceptions and are either mandatory or discretionary.

Mandatory Exceptions:

- disclosures that would harm the business interests of a third party
- disclosures that would be an unreasonable invasion of a person's privacy

Discretionary Exceptions:

- the substance of deliberations of an *in camera* meeting, held in the absence of the public
- advice or recommendations developed by or for a public body
- 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 60 days

Commissioner Review and the Need to Create an FOI Response Record

The Act provided for the appointment of an Information and Privacy Commissioner, whose duties include investigating complaints around access and privacy, reviewing decisions on access and offering comment on privacy issues. Because all access decisions by KPU may potentially be reviewed by the Office of the Information and Privacy Commissioner, it is essential that the FOI coordinator document the way access requests have been processed.

The FOI Coordinator is always available to provide guidance and advice on handling FOI access requests. You may contact Fatima Sakarya at 604-599-3290 or Fatima.sakarya@kpu.ca for more information.