

**A Practical
Guide for
CUPE
Members
on how
to use the
Freedom of
Information
Legislation in
Saskatchewan**

Getting the Information You Want

Produced by CUPE Research

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of Public Employees

This Guide is dedicated to Joe Kuchta, *Owls and Roosters* blogger and tireless public information activist, who died in November 2011 in Saskatoon. May we all be inspired by his pursuit of the truth.

This document is for information purposes only and should not be considered legal advice.

Users of this Guide should still consult the legislation directly and familiarize themselves with its provisions.

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Introduction

“The overarching purpose of access to information legislation is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and that politicians and bureaucrats remain accountable to the citizenry. Rights to state-held information are designed to improve the workings of government; to make it more effective, responsive and accountable.”

– Supreme Court of Canada

Twenty years ago, on April 1, 1992, Saskatchewan proclaimed the first access and privacy law in western Canada. Nine years earlier, in 1983, Chief Justice E.M. Culliton issued a report calling for such legislation in the province, but it took years to come to fruition.

Since then, access and privacy legislation has expanded and so have our expectations.

In the age of internet and free access to all kinds of information, it sometimes appears that anything you want to know can be found on the world-wide-web.

That is not always the case. Governments, local governments and public sector employers collect all kinds of information and make decisions based on information that is not often publicly available.

Governments make decisions that affect CUPE members' daily lives: funding cuts to educational assistants in our schools, new policies like shared services or LEAN that restructure our workplaces, funding to private surgical clinics, and reforming labour legislation.

It is important that we learn how to access information from our public institutions. Sometimes we can obtain information simply by asking for it. Other times, we may have to use freedom of information legislation to get public disclosure of documents.

“The need for information is compounded by the inevitable tendency of governments, and those exercising powers on behalf of the government, to disclose only as much as they deem necessary. Despotic secrecy is the historic norm. Democracy sets its face against this. Yet, unchecked, the tendency is always there. And unchecked, it will inevitably undermine democracy.”

– Right Honourable Beverley McLachlin
Chief Justice of Canada (2009)

Why this Guide?

- Government accountability and transparency are the foundations of democracy.
- At times government information is not readily available to the public or fully disclosed
- CUPE members and staff need to access information from local and provincial governments and public institutions. Freedom of information legislation helps us do that.

What kind of information do CUPE members and staff need?

- Salaries and benefits of out of scope personnel and approved wage increases
- Public payments to private contractors or agencies
- Background documents on how decisions were made for policies or initiatives that impact our members
- Correspondence or briefing notes that give background to government policies or actions
- The amount of government funding provided to agencies or non-profit organizations where we represent the workers

Different ways to access information

When you are looking for specific government information, you should always consider getting the information first through informal means before considering an Access to Information request. Try some of these options first.

TIPS

Try these informal methods first.

You may get the information you need at no cost and in less time.

Use Access to Information requests under freedom of information legislation as a last resort.

Informal Methods

- Write a letter to the government entity or public employer requesting the information.
- Call an official who may have the information and request it through this person.
- Contact the Freedom of Information (FOIP) officer in the government ministry or public entity who may be able to release information without an access to information request. Every Ministry of the government and each public entity covered by freedom of information legislation has a person appointed to deal with access to information requests. They can be extremely helpful to you.

Annual Reports or Minutes of Meetings

- Review the annual reports of government Ministries, Crowns, Agencies or local governments such as school divisions and regional health authorities. These should be available on their websites.
- Access the minutes of local government board or council meetings for decisions.

Financial Information

- If you are looking for financial information, such as the salaries of public officials or how much a company was paid to provide services, you can often find this in Public Accounts. The provincial government, municipal governments and regional health authorities are required by legislation to annually disclose employee compensation in Public Accounts or annual reports.
- School divisions are not required to publish salary information but rate payers within that school division can request this information.
- Audited financial statements of school divisions and regional health authorities are also available on line but are not as detailed as Public Accounts.
- Out-of scope salaries or wage increases of local authorities may be contained in bylaws or board minutes.

Information on Corporations and Non-profit organizations

There are many occasions when CUPE members or staff need to get information on local businesses, corporations and non-profit organizations.

Some examples include:

- A public body is contracting-out services to a business or a non-profit organization. The union wants to know the names of the directors and shareholders to ensure there is no conflict-of-interest.
- For organizing drives, we need to know the legal name of the employer.
- If a non-profit organization with a unionized CUPE workplace is pleading poverty, we need to see the audited financial statements.

This kind of information can be found through The Information Services Corporation of Saskatchewan (ISC). All businesses and non-profit organizations must register with ISC (formerly Corporations Branch in the Ministry of Justice) and provide a list of their directors and/or shareholders.

Non-profit organizations are required to file their audited financial statements annually with the ISC but corporations do not have to file their financial statements.

- To search for the names of Directors and/or shareholders of non-profit organizations or business entities, go to the Information Services Corporation of Saskatchewan website (www.isc.ca).
- To get a copy of the annual audited financial statements of a non-profit organization, you can download a copy from the ISC website.

- To do a search online, or download documents, you must first create a user account, and allow your credit card to be charged \$2 for each name search and \$3 for each corporate profile that you download. You can call ISC and they may tell you the correct entity name of the corporation over the phone without charging you.

Production of documents specified in *The Education Act*, *The Cities Act* and other legislation

It is important to review any requirements for the disclosure of information in legislation governing public institutions.

- Section 110 (1) of *The Education Act*, for example, requires boards of education to make minutes available for inspection during office hours.
- Section 91(1) of *The Cities Act* authorizes even broader public access to municipal documents:

91(1) Any person is entitled at any time during regular business hours to inspect and obtain copies of:

- (a) Any contract approved by the council, any bylaw or resolution and any account paid by the council relating to the city;
- (b) The statements maintained by the clerk in accordance with section 116 and the securities register;
- (b.1) The city's financial statements and auditor's report prepared in accordance with section 155;

- (c) Any report of any consultant engaged by or of any employee of the city, or of any committee or other body established by a council pursuant to clause 55(a), after the report has been submitted to the council, except any opinion or report of a lawyer;
- (d) The minutes of the council after they have been approved by the council; and
- (e) Any other reports and records authorized to be inspected by the council.

(2) Within a reasonable time after receiving a request, the clerk shall furnish the copies requested on payment of any fee that the council may fix.

(3) For the purposes of subsection (2), the fee set by council must not exceed the reasonable costs incurred by the city in furnishing the copies.

Freedom of Information Legislation

There are three pieces of legislation in Saskatchewan that deal with Freedom of Information and the Protection of Privacy. One of these Acts deals exclusively with the protection of personal health records (*The Health Information Protection Act*).

This guide will discuss only the following two pieces of legislation:

1. ***The Freedom of Information and Protection of Privacy Act (FOIP) and Regulations***

This Act covers provincial government institutions, which includes Ministries of the government, Crown corporations, commissions, boards and other public bodies (see Appendix B).

2. ***The Local Authority Freedom of Information and Protection of Privacy Act (LAFOIP) and Regulations***
(See Appendix C.)

This legislation covers local authorities such as municipalities, school boards, universities, regional health authorities, community clinics, the Health Quality Council, the Saskatchewan Assessment Management Agency, the Saskatchewan Cancer Agency and the Saskatchewan Health Research Foundation (see Appendix C).

It is important that you know under which legislation the public body falls and that you use the appropriate Access to Information request form when making your inquiry. The full list of prescribed organizations covered by the respective legislation can be found in the Appendices of the Regulations to the two Acts.

TIPS

Don't be shy about calling the Freedom of Information Officer or afraid that your call might "tip them off" about your request. They can help you refine your request which helps you get what you want and makes their job easier.

Who is not covered by FOIP legislation?

TIPS

Don't forget to ask for attachments. Sometimes a request may generate email correspondence that originally had documents attached, but the documents may not be provided with the response because the applicant did not specify "and all attachments" with the correspondence.

Although many non-profit organizations receive a substantial amount of their funding from government sources, they are not government institutions and therefore not subject to freedom of information legislation. The Saskatchewan Association of Health Organizations (SAHO), community-based organizations, and other entities that receive government funding are registered as non-profit organizations which do not fall under freedom of information legislation.

Neither are private companies covered by freedom of information legislation. If you are trying to get information on a business through documents that are in the hands of a public body, the public body may refuse to provide this information under section 19(1) which exempts "third party information".

What you can ask for

Records that can be released

When making an access to information request, you need to request a specific "record." As the Information and Privacy Commissioner in Saskatchewan has emphasized, "the law is records-driven."

What is a record?

Sections 2(1)(i) of FOIP and 2(J) of LA FOIP define a record as:
"...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."

Examples of different types of records include: correspondence (including email), draft documents, minutes of meetings, briefing notes, reports, vouchers, drawings, handwritten notes, and other documents.

You cannot make a request for information that does not exist in the form of a record. For example, you cannot make a request asking for the opinion or views of a government Minister or for the reasons a decision was taken. Instead you could ask for the briefing notes to the Minister that may provide the rationale for a particular decision because briefing notes are considered a “record.” You may still write a letter to a Minister of government and ask for his or her opinion on an issue, but that would be outside of freedom of information law.

Who has the record?

Once you determine what kind of record you want, you need to know who or which public body controls or has a copy of the record. Your request for information needs to go to the public body that has control or possession of the record.

If the public entity does not own or have a copy of the record you request, the legislation specifies it must transfer your request to the appropriate Ministry or public body. This can add delays in getting a response in a timely manner.

An important strategy is to call the freedom of information point person in the public body first, and confirm that they have the record before you file a request.

TIPS

In some cases, there may be more than one public entity that owns the record. For example, if your request is for copies of correspondence between a school division and the Ministry of Education, both entities would have copies of the correspondence. In such a situation, you may want to make the request to the Ministry of Education since there is no application fee required with requests under FOIP while there is a \$20 application fee for all requests under LAFOIP.

How to file an access request

TIPS

Use the government directory (<http://gtds.gov.sk.ca/>) to identify specific individuals within Ministries who may have the information you seek. You can ask for correspondence or email exchanges of this person on the specific issue about which you are inquiring.

There are two different pieces of legislation and therefore two different forms for access to information requests. You need to determine to whom your request is directed so you can use the appropriate form. You can access the forms on the website of the Office of the Information and Privacy Commissioner (OIPC) at: <http://www.oipc.sk.ca/forms.htm>

For information requests to provincial government Ministries or executive council, Crown corporations or government commissions and agencies, you would use the “Government Institutions” form.

For inquiries to local governments, you would use the “Local Authorities” form and must include a \$20 application fee for each request.

The OIPC website also has a “Request for Review” form if you are not satisfied with the response to your request and want the Commissioner to conduct a review (see section below on Appealing to the Information and Privacy Commissioner).

It is important to keep your request short and specific. Fishing expeditions are not usually efficient. The broader the request, the more difficult it may be for the government body to respond. You will pay dearly for the request and may receive a box of mostly useless paper.

Request a specific document or record, and use short time frames for your request. If you do not specify the time frame, your request may generate too much information. For example, make a request for correspondence “from the period March 1, 2011 to June 30, 2011” rather than asking for “all correspondence” on a particular subject with no timeframe.

If you receive your response and you realize that your time frame should have been broader, you can always file another request with different dates.

How much will it cost to make a request?

Application fees

There is no application fee required for access to information request under FOIP. Under LAFOIP, however, a payment of \$20 is required for every access to information request. You can check the waiver of fees if you can show financial hardship.

Fees to process your request

The government body can charge you for the costs to produce the record(s) in response to your request. If there are costs associated with your request, you will receive a letter from the government body detailing those costs and providing a fee estimate.

The *Regulations* outline what public bodies can charge to produce and review documents for a request. Under FOIP, if your request can be answered in two hours or less, there is no charge. If it takes more time, the public body can charge \$15.00 per half hour after the first two hours. Under LAFOIP, the first hour searching for the record is free and each half hour after that you will be charged \$15.00.

You will be charged \$0.25 per page of photocopying or computer printout.

There are other fees detailed in the *Regulations*.

TIPS

To keep the costs low, you can split your request into two separate requests. The first two hours of preparing the response to each request are free, so this will reduce your overall costs.

What if you disagree with the fee estimate?

If you agree with the costs, you must pay half the fee estimate before your request for information will proceed. If you feel the costs are too high, there are a number of things you can do:

- contact the freedom of information officer in the public institution and negotiate the fee. You may be able to narrow the terms of your request and reduce the fee estimate
- ask for an electronic copy of the record(s), if feasible, to save the cost of photocopying
- pay half the estimated fee and then appeal to the Information and Privacy Commissioner if you feel the charges are unreasonable

There have been several review cases where the Information and Privacy Commissioner has found that the fees charged by a public body were excessive. In one case (Report F-2010-001) the Commissioner recommended that the Ministry of Health reimburse fees paid by the applicant for one request and to recalculate the fee estimate for a second request.

In August of 2012, CUPE requested from the City of Regina a copy of paid invoices related to the City Plaza project. The City provided a fee estimate of \$1,590. CUPE called the City official and was able to refine the request to an itemized list of invoices and the fee estimate was reduced to \$120.

Where do you send your request?

The bottom of the access to information form lists who should receive the form and copies. Once you have completed the form, mail it to the government institution or local authority

to whom you are directing your request. Copies of your form will be provided to the coordinator of freedom of information within that Ministry or public body. Keep a copy of the form for your own records.

Do not send your access to information request to the Information and Privacy Commissioner. Only contact his office if you are requesting a review of the response to your request.

Timelines to process your request

Within 30 days of receiving your request, the public body must provide you with the information you request, transfer your request to another public entity, notify you of an extension of the time limit, or deny access.

The public body can ask for an additional 30 day extension but must have legitimate reasons to request more time. Some of the reasons outlined in the legislation include:

- having to go through a large number of records to locate the information and responding within the 30 days would unreasonably interfere with the operations of the government institution,
- consultations are necessary in order to comply with the request and this cannot be done within 30 days, or
- the government must give notice to a third party before releasing information.

If the record you are requesting is already published, the public body must refer you to the publication. If the record is to be published within 90 days, the public body will inform you of this and the approximate date of publication.

Outcomes to your Request

There are three possible outcomes to your request for information.

- the record(s) will be fully disclosed
- the record(s) will be refused
- the record(s) will be “severed” or partially disclosed (certain sections redacted or blacked out)

If you receive full disclosure of documents, you need to review the response and ensure that you received the information that you wanted. If you are satisfied, that is the end of your request.

In the second possible outcome, the public body may refuse to provide you with the record citing exemptions in the legislation or the public body may say that the record does not exist or is not in their possession. If the public body lists exemptions to justify denying you the record, you should review the exemptions outlined in the legislation and decide if you are satisfied with these reasons (see section on exemptions below).

If you receive only a partial disclosure (part of the information is severed or redacted), the public body must tell you why this information is redacted (name the specific exemption in the legislation).

You have the right to appeal to the Privacy and Information Commissioner if you do not agree with the public body’s refusal or redaction of the record.

TIPS

Keep a paper trail of your request – the date you filed the request, the first response, and all correspondence (including email) with the FOIP access person. It is a good idea to write a cover letter with your access to information form.

Exemptions – what doesn't have to be released?

Under Part III of the FOIP, the public body can refuse to provide the following kinds of records that are exempt from the Act:

- records obtained in confidence from other governments [sec 13(1)]
- records that may prejudice, interfere or adversely affect a lawful investigation or proceeding [sec 15(1)]
- cabinet documents [sec 16(1)]
- advice, recommendations or policy options from government officials [sec 17(1)]
- a record that would disclose trade secrets or prejudice the economic interest of the government, [sec 18(1)]
- third party information that may include trade secrets, financial, commercial, scientific, technical or labour relations information supplied in confidence by a third party [sec 19(1)]
- testing procedures, tests and audits [sec 20]
- a record, if disclosed, could threaten the safety or physical or mental health of an individual [sec 21]
- a record that is subject to solicitor-client privilege [sec 22].

These exemptions hold unless the record is more than 25 years old.

LAFOIP also lists exemptions in Part III of the Act, which are identical in nature to the exemptions in FOIP except that “documents of a local authority” replaces “cabinet documents.”

If all or part of your request is being denied based on one of the above exemptions, the government response should

TIPS

Keep all communication in writing. A FOIP officer may call you to discuss your request.

Confirm telephone conversations in writing.

TIPS

Review documents you receive in response to an Access to Information request for ideas to make additional requests. For example, if minutes from a meeting refer to a document or Task Force, you can request a copy of that document or the Terms of Reference of the Task Force.

identify which section of the Act they are invoking to deny your request. You should review these sections of the legislation and decide if you feel the exemption is justified. If not, you can ask the Commissioner to conduct a review.

The Commissioner has found in many cases that the use of exemptions in the legislation were not appropriate. The burden of proof is on the public body to justify the use of exemptions. As a Saskatchewan Court of Appeal judge stated, "...these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act."

Appealing to the Information and Privacy Commissioner

You have the right to appeal the way your request for information was handled to the Privacy and Information Commissioner. There is no charge for a review but it is not automatic that a review will happen. The Commissioner's office will decide if your review has merit before taking it on.

You have up to one year from the date of the written decision of the public body to appeal the decision. You can ask for a review for the following reasons:

- you were refused access to all or part of the record and you do not agree with the reasons for the refusal
- you were notified that the record does not exist or cannot be found and you do not believe this to be true
- you did not receive a reply to your request within the legislated time frame
- you disagree with the public body's request for a time extension to respond to your request
- you believe that the fees you were charged to produce the record were excessive.

The form for the Request for Review is on the website of the Office of the Information and Privacy Commissioner and must be sent to that office.

If the Commissioner agrees to conduct a review, his office will mediate between you and the public body. The majority of disputes are settled through mediation, although it may take more than a year to resolve.

The 2011 – 2012 Annual Report of the Office of the Information and Privacy Commissioner states that the average time to resolve a review case is 15 months.

It is important to note that the Commissioner cannot enforce his decisions but, instead, makes recommendations to the public body. In most cases, the public bodies abide by his recommendations in full or in part.

If the Commissioner's recommendations are not accepted, the applicant may apply to the Court of Queen's Bench for an order.

TIPS

Government speeches and news releases are good sources for information.

Review these regularly and look for any references to committees, meetings, Task Forces, etc. You can ask for minutes of meetings or reports presented to meetings.

Access to Information Checklist

Before you file your Access to Information Request, have you:

- Identified which government institution or public body has the information you want?
- Checked with an official in the government institution or public body to see if you can get the information without filing an Access for Information Request?
- Checked which legislation the public body falls under and downloaded the proper Access to Information form?
- Contacted the Freedom of Information officer or coordinator within the public body to check if your request is properly worded?
- Included a \$20 application fee for requests under The Local Authority Freedom of Information and Protection of Privacy Act?
- Kept a copy of your request and the date you sent it in?

Boards, Commissions, Crown Corporations and Other Bodies Prescribed as Government Institutions in *The Freedom of Information and Protection of Privacy Regulations*

| | | |
|--|--|--|
| Agricultural Credit Corporation of Saskatchewan | Public and Private Rights Board | Saskatchewan Police Commission |
| Agricultural Implements Board | Public Complaints Commission | Saskatchewan Power Corporation |
| Agricultural Operations Review Board | Public Disclosure Committee | Saskatchewan Power Corporation Superannuation Commission |
| Automobile Injury Appeal Commission | Public Employees Pension Board | Saskatchewan Research Council |
| Board of Revenue Commissioners | Public Guardian and Trustee of Saskatchewan | Saskatchewan Telecommunications |
| Crown Investments Corporation of Saskatchewan | Public Service Commission | Saskatchewan Telecommunications Holding Corporation |
| Enterprise Saskatchewan | Public Service Superannuation Board | Saskatchewan Transportation Company |
| eHealth Saskatchewan | Saskatchewan Apprenticeship and Trade Certification Commission | Saskatchewan Water Corporation |
| Farm Land Security Board | Saskatchewan Archives Board | Saskatchewan Watershed Authority |
| Government House Foundation | Saskatchewan Arts Board | Saskatchewan Wetlands Conservation Corporation |
| Highway Traffic Board | Saskatchewan Centre of the Arts | SaskEnergy Incorporated |
| Information Services Corporation of Saskatchewan | Saskatchewan Crop Insurance Corporation | Surface Rights Arbitration Board |
| Innovation Saskatchewan | Saskatchewan Financial Services Commission | Teachers' Superannuation Commission |
| Labour Relations Board | Saskatchewan Gaming Corporation | Technical Safety Authority of Saskatchewan |
| Law Reform Commission of Saskatchewan | Saskatchewan Government Insurance | Wakamow Valley Authority |
| Liquor and Gaming Authority | Saskatchewan Grain Car Corporation | Wanuskewin Heritage Park Corporation |
| Liquor Board Superannuation Commission | Saskatchewan Housing Corporation | Wascana Centre Authority |
| Meewasin Valley Authority | Saskatchewan Human Rights Commission | Water Appeal Board |
| Minimum Wage Board | Saskatchewan Lands Appeal Board | Western Development Museum |
| Multitype Library Board | Saskatchewan Legal Aid Commission | Workers' Compensation Board |
| Municipal Financing Corporation of Saskatchewan | Saskatchewan Municipal Board | Workers' Compensation Superannuation Board |
| Office of Residential Tenancies | Saskatchewan Opportunities Corporation | |
| Oil and Gas Conservation Board | Saskatchewan Pension Annuity Fund Board | |
| Physician Recruitment Agency of Saskatchewan | Saskatchewan Pension Plan Board of Trustees | |
| Prairie Agricultural Machinery Institute | | |
| Provincial Court Commission | | |
| Provincial Mediation Board | | |

Boards, Commissions and Other Bodies Prescribed as Local Authorities in *The Local Authority Freedom of Information and Protection of Privacy Regulations*

[Subclause 2(f)(v) of the Act]

1. A board, commission or other body established pursuant to *The Cities Act*
2. A board, commission or other body established pursuant to *The Municipalities Act*
3. A board, association, commission or other organization appointed pursuant to *The Northern Municipalities Act*

Boards, Commissions and Other Bodies Prescribed as Local Authorities (LAFOIP)

[Subclause 2(f)(xvii) of the Act]

1. Associations as defined in *The Mutual Medical and Hospital Benefit Associations Act*
2. Community clinics as defined in section 263 of *The Co-operatives Act, 1996*
3. Health care organizations as defined in *The Regional Health Services Act*
4. Regional health authorities as defined in *The Regional Health Services Act*
5. The Health Quality Council
6. The Saskatchewan Assessment Management Agency
7. Saskatchewan Cancer Agency
8. The Saskatchewan Health Research Foundation
9. The St. Louis Alcoholism Rehabilitation Centre

Notes:

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