

## Publisher's Note

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Klein and Kratchanov

# Government Information: The Right to Information and the Protection of Privacy in Canada

*Government Information: The Right to Information and the Protection of Privacy in Canada*, by Kris Klein and Denis Kratchanov, is the only publication of its kind dealing exclusively with access to information and privacy of personal information in the public sector in Canada. This is the second edition of Government Information.

The first edition was written by Colin McNair and Christopher Woodbury and was maintained by them, through updating releases, for the period from 1989 through 2008.

## HIGHLIGHTS

This release feature new legal memoranda in the Issues in Focus section, updates to the Words and Phrases section, and updates to the legislation.

- **Issues in Focus – What factors will the Alberta Privacy Commissioner or courts consider when deciding whether the necessity for public scrutiny pursuant to section 17(5)(a) of the *Freedom of Information and Protection***

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**of Privacy Act, R.S.A. 2000, c. F-25 (“FOIPP Act”)** favours disclosure of third party personal information? – Section 17(5)(a) of FOIPP Act does allow a public body to consider the fact that disclosure may be desirable for the purpose of subjecting the activities of a public body to public scrutiny. However, it is only one of the factors to be considered along with the other factors set out in section 17(5) or any other factors which may not be specified in section 17(5) but that are relevant to the matter.

- **Issues in Focus – What is the applicable standard of review to be applied to a decision of the Privacy Commissioner under the *Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25 (“FOIPP Act”)*, when that decision involves the interpretation of legislation other than FOIPP Act?** – Since the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 CarswellNB 124 (S.C.C.), the Alberta courts have been consistent in their application of the Dunsmuir principles and standard of review test. Where the Privacy Commissioner’s decision involves interpretation of FOIP or related legislation that deals with the protection and disclosure of personal information, the court’s standard of review will be reasonableness unless the questions falls into a category of questions to which the correctness standard applies.
- **Words and Phrases – Correctness** – The standard of review of the refusal of the head of a government institution to disclose relevant records based on that record containing personal information is correctness. Either the record falls within the disclosure exemption or it does not. In a correctness review the reviewing court does not show deference to the decision maker’s reasoning process. The court undertakes its own analysis of the question and decides whether or not it agrees with the determination of the decision maker. If it does not agree then the court will provide the correct answer: *Tomar v. Canada (Parks Agency)* (2018), 2018 CarswellNat 654, 2018 CarswellNat 998.