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### **GOVERNMENT INFORMATION: THE RIGHT TO INFORMATION AND THE PROTECTION OF PRIVACY IN CANADA**

**Klein and Kratchanov**  
**Release No. 5, September 2021**

#### **Publisher's Special Release Note 2021**

The pages in this work were reissued in July 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the July 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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*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 McNairn and Christopher Woodbury and was maintained by them, through updating releases, for the period from 1989 through 2008.

## Highlights

This release features updates to the Issues in Focus section, the Words & Phrases, and legislation for Ontario and Prince Edward Island.

- **Issues in Focus — Does the Privacy Commissioner in Alberta have standing to launch an appeal of a judicial review decision quashing one of the Privacy Commissioner’s orders?** — The current state of the law in Alberta is such that a Privacy Commissioner does not have standing to commence an appeal of a judicial review decision that quashed the Privacy Commissioner’s order unless the matter at issue is jurisdiction. There is no right to appeal on the merits of the judicial review decision. This is distinct from the ability of the Privacy Commissioner to make submissions on an appeal launch by another party, which is allowed.
- **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 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 in its evaluation of whether disclosure of personal information would be an unreasonable invasion of a third party’s personal privacy, 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 s. 17(5) or any other factors which may not be specified in s. 17(5) but that are relevant to the matter.
- **Issues in Focus — What is required to engage section 32 of the Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25 (“FOIPPA”)** — The burden of proof under s. 32 rests with the applicant. It will be necessary for the applicant to show that the pre-conditions for s. 32 exist. These pre-conditions are: a) risk of significant harm to the environment, b) risk of significant harm to the health or safety of the public, and c) release of the informa-

tion is clearly in the public interest. Release of information pursuant to section 32 would only be required if one of the pre-conditions is satisfied, and in an emergency-like situation.

### **ProView Developments**

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