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

**Klein and Kratchanov
Release No. 2, April 2022**

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 *Freedom of Information and Protection of Privacy Act*, (Ontario) and the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) as well as the addition of the following Regulations: Can. Reg. 83-507 — Access to Information Regulations; Can. Reg. 83-508 — Privacy Regulations; Man. Reg. 64/98 — Access and Privacy Regulation; N.B. Reg. 2010-111 — General Regulation — Right to Information and Protection of Privacy Act; Nfld. Reg. 45/15 — Access to Information and Protection of Privacy Regulations; N.S. Reg. 105/94 — Freedom of Information and Protection Of Privacy Regulations.

- **Freedom of Information and Protection of Privacy Act (Ontario) – Freedom of Information – Exemptions – Section 12: Cabinet records** – A journalist with the CBC requested access to letters sent by Premier to Ontario’s Cabinet ministers. The Cabinet Office refused the CBC’s request. The CBC appealed to the Information and Privacy Commissioner (“IPC”). The Cabinet Office opposed disclosure of the letters on the basis of the Cabinet privilege exemption under s. 12(1). The IPC ordered the letters to be disclosed to the requestor. The Divisional Court dismissed the Attorney General’s application for judicial review of the IPC order, and Attorney General’s further appeal was dismissed by the Court of Appeal. The IPC’s exercise of its statutory authority under s. 12(1) of the Act was reasonable. The letters were the culmination of a deliberative process. While they highlighted the decisions the Premier ultimately made, they did not shed light on the process used to make those decisions, or the alternatives rejected along the way. The letters did not threaten to divulge Cabinet’s deliberative process or its formulation of policies: *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2022 CarswellOnt 859, 2022 ONCA 74 (Ont. C.A.).
- **Freedom of Information and Protection of Privacy Act (Ontario) – Freedom of Information – Exemptions – Section 18: Economic and other interests of Ontario** — As per 2012 amendments, the language of s. 18(1)(j) recognizes the continuation of common law quality assurance privilege

for non-*Quality of Care Information Protection Act* quality of care reviews (i.e. as may relate to quality of care assessments and evaluations so as to improve care and services provided by a hospital): *Algarawi v. Berger*, 2022 ONSC 396, 2022 CarswellOnt 49 (Ont. S.C.J.).

- **Freedom of Information and Protection of Privacy Act (Ontario) – Freedom of Information – Access Procedure – Section 24: Request** — In a case where a number of people at an institution conducted a search for records according to instructions from a coordinator, the appellant questioned whether the searchers followed the instructions. However, the adjudicator did not accept the appellant's submission as she offered no evidence to support it: *Wilfrid Laurier University, Re*, 2021 CarswellOnt 20358 (Ont. I.P.C.).

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