

## PART XX

### FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

*This version of Part XX contains an UNOFFICIAL inclusion of amendments that resulted from passage of Chapter 11 of the Statutes of Nova Scotia, 1999, the Act to amend the Freedom of Information and Protection of Privacy Act, effective November 23, 1999. Please note that the amendments were made by virtue of Section 24 of that Act, and Section 502 of this Act.*

*The inclusion of the amendments here is provided for convenience only; for accurate reference, please see Part XX of the Municipal Government Act and the amending Act noted above in the official volumes of the Statutes of Nova Scotia.*

#### **Interpretation**

**461** In this Part,

- (a) "background information" means
  - (i) any factual material,
  - (ii) a public opinion poll,
  - (iii) a statistical survey,
  - (iv) an appraisal,
  - (v) an economic forecast,
  - (vi) an environmental-impact statement or similar information,
  - (vii) a final report or final audit on the performance or efficiency of a municipality or on any of its programs or policies,
  - (viii) a consumer test report or a report of a test carried out on a product to test equipment of a municipality,

(ix) a feasibility or technical study, including a cost estimate, relating to a policy or project of a municipality,

(x) a report on the results of field research undertaken before a policy proposal is formulated,

(xi) a report of an external task force, advisory board or similar body that has been established to consider any matter and make reports or recommendations to a municipality, or

(xii) a plan or proposal to establish a new program or to change a program, if the plan or proposal has been approved or rejected by the council;

(b) "employee" in relation to a municipality, includes a person retained under an employment contract to perform services for the municipality;

(c) "law enforcement" means

(i) policing, including criminal-intelligence operations,

(ii) investigations that lead, or could lead, to a penalty or sanction being imposed, and

(iii) proceedings that lead, or could lead, to a penalty or sanction being imposed;

(d) "municipal body" means a committee, community council, agency, authority, board or commission, whether incorporated or not

(i) a majority of the members of which are appointed by, or

(ii) which is under the authority of,

one or more municipalities;

(e) "municipality" means a regional municipality, town, county or district municipality, village, service commission or municipal body;

(f) "personal information" means recorded information about an identifiable individual, including

(i) the individual's name, address or telephone number,

(ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,

(iii) the individual's age, sex, sexual orientation, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, blood type or inheritable characteristics,

(vi) information about the individual's health-care history, including a physical or mental disability,

(vii) information about the individual's educational, financial, criminal or employment history,

(viii) anyone else's opinions about the individual, and

(ix) the individual's personal views or opinions, except if they are about someone else;

(g) "prescribed" means prescribed by the regulations made pursuant to the *Freedom of Information and Protection of Privacy Act* or this Part;

(h) "record" includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical

or other means, but does not include a computer program or any other mechanism that produces records;

(i) "responsible officer" means, in the case of a

(i) regional municipality, town or county or district municipality, the chief administrative officer, if one has been appointed or, if one has not been appointed, the clerk,

(ii) village or service commission, the clerk,

(iii) municipal body

(A) a majority of the members of which are appointed by one municipality, the responsible officer for the appointing municipality,

(B) which is under the authority of one municipality, the responsible officer for that municipality, or

(C) which is not described in paragraph (A) or (B), the chair or presiding officer;

(j) "review officer" means the review officer appointed by the Governor in Council pursuant to the *Freedom of Information and Protection of Privacy Act*;

(k) "third party", in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than

(i) the person who made the request,

(ii) the municipality to which the request is made,

or

(iii) a municipal body, a majority of the members of which are appointed by, or which is under the authority of, the municipality to which the request is made;

(l) "trade secret" means information, including a formula, pattern, compilation, program, device, product, method, technique or process, that

(i) is used, or may be used, in business or for any commercial advantage,

(ii) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use,

(iii) is the subject of reasonable efforts to prevent it from becoming generally known, and

(iv) the disclosure of which would result in harm or improper benefit.

**Purpose of Part**

**462** The purpose of this Part is to

(a) ensure that municipalities are fully accountable to the public by

(i) giving the public a right of access to records,

(ii) giving individuals a right of access to, and a right to correction of, personal information about themselves,

(iii) specifying limited exceptions to the rights of access,

(iv) preventing the unauthorized collection, use or disclosure of personal information by municipalities, and

(v) providing for an independent review of decisions made pursuant to this Part;

(b) provide for the disclosure of all municipal information with necessary exemptions, that are limited and specific, in order to

(i) facilitate informed public participation in policy formulation,

(ii) ensure fairness in government decision-making, and

(iii) permit the airing and reconciliation of divergent views; and

(c) protect the privacy of individuals with respect to personal information about themselves held by municipalities and to provide individuals with a right of access to that information.

#### **Application of Part**

**463 (1)** This Part applies to all records in the custody or under the control of a municipality.

**(2)** Notwithstanding subsection (1), this Part does not apply to

(a) published material or material that is available for purchase by the public;

(b) material that is a matter of public record;

(c) a note, communication or draft decision of a person acting in a judicial or quasi-judicial capacity;

(d) a record of a question that is to be used on an examination or test;

(e) material placed in the archives of a municipality by or for a person, agency or other organization other than the municipality; or

(f) a record relating to a prosecution, if all proceedings in respect of the prosecution have not been completed; *or*

(g) *a record of each representation made on behalf of a municipality to the Review Officer in the course of a review pursuant to Section 487 and all material prepared for the purpose of making the representation.*

### **Limitations on effect of Part**

**464** This Part does not

(a) limit the information otherwise available by law to a party to litigation, including a civil, criminal or administrative proceeding;

(b) affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents;

(c) prohibit the transfer, storage or destruction of any record in accordance with any other Act of the Legislature or any regulation;

(d) prevent access to records maintained in a public office for the purpose of providing public access to information; or

(e) restrict disclosure of information for the purpose of a prosecution.

### **Conflict between provisions**

**464A** (1) *Where there is a conflict between a provision of this Part and a provision of any other enactment and the provision of the other enactment restricts or prohibits access by any person to a record, the provision of this Part prevails over the provision of the other enactment unless subsection (2) or the other enactment states that the provision of the other enactment prevails over the provision of this Act.*

**(2) The following enactments that restrict or prohibit access by any person to a record prevail over this Part:**

- (a) Section 19 of the Consumer Reporting Act;**
- (b) Section 51 of the Corporation Capital Tax Act;**
- (c) Section 7 of the Emergency 911 Act;**
- (d) Section 19 of the Forests Act;**
- (e) Section 126 of the Health Act;**
- (f) Section 71 of the Hospitals Act;**
- (g) subsection (7) of Section 9 of the Juries Act;**
- (h) Section 28 of the Labour Standards Code;**
- (i) Section 32 of the Maintenance Enforcement Act;**
- (j) subsection (2) of Section 87 and Sections 150 and 175 of the Mineral Resources Act;**
- (k) subsection (6) of Section 98 of the Motor Vehicle Act;**
- (l) Sections 53, 61 and 62 of the Occupational Health and Safety Act;**
- (m) subsection (3) of Section 11 of the Pension Benefits Act;**
- (n) Sections 72 and 100 of the Petroleum Resources Regulations made pursuant to the Petroleum Resources Act;**
- (o) subsection (4) of Section 21 of the Primary Forest Products Marketing Act;**
- (p) Section 48 of the Public Trustee Act;**

(q) *Section 9 of the Statistics Act;*

(r) *subsection (3) of Section 9 of the Procedure Regulations made pursuant to the Trade Union Act;*

(s) *subsection (8) of Section 37 and Section 45 of the Vital Statistics Act;*

(t) *Sections 23 and 24 of the Young Persons' Summary Proceedings Act.*

(3) *The Governor in Council may, by regulation, amend subsection (2) by*

(a) *adding to that subsection a reference to an enactment;*

(b) *deleting a reference to an enactment from that subsection.*

(4) *Notwithstanding any other provision in this Act, the provisions in the Vital Statistics Act relating to*

(a) *rights of access to personal information, including the right to request a search of personal information;*

(b) *remedial rights relating to the rights described in clause (a);*

(c) *correction of personal information; and*

(d) *procedures relating to the matters referred to in clauses (a) to (c), including the payment of fees and the searching of and obtaining access to personal information, apply in place of the provisions in this Act respecting the matters in clauses (a) to (d).*

(5) *Notwithstanding any other provision in this Act, the provisions of Section 71 of the Hospitals Act, and any regulations made in respect of Section 71, relating to*

- (a) *rights of access to personal information;*
- (b) *remedial rights relating to the rights described in clause (a); and*
- (c) *procedures relating to the matters referred to in clauses (a) and (b), including the payment of fees and the searching of and obtaining access to personal information, apply in place of the provisions in this Part respecting the matters in clauses (a) to (c).*

### **Right of access and restriction**

**465 (1)** A person has a right of access to any record in the custody, or under the control, of a municipality upon making a request as provided in this Part.

(2) The right of access to a record does not extend to information exempted from disclosure pursuant to this Part but, if that information can reasonably be severed from the record, an applicant has the right of access to the remainder of the record.

**(2A)** *Subject to subsection (2B), notwithstanding anything contained in this Part, where the record is an executed contract*

(a) *in which provision is made for the municipality to make a substantial transfer of risk to a person, including risk related to the operation or financing, or both, of government activities; and*

(b) *that is, or is in a class of contracts that is designated, before or within ninety days of the execution of the contract by the legal decision-making authority by which the municipality acts,*

*the right of access extends to any information in the contract that, but for this subsection, would be exempted from disclosure pursuant to this Part.*

**(2B)** *Subsection (2A) does not apply in respect of any information in the contract, to which that subsection refers,*

(a) *respecting trade secrets;*

(b) *respecting the financial and business information of the person to whom that subsection refers; and*

(c) *the disclosure of which may reasonably be expected to endanger the safety or health of the public, a person or a group of persons.*

(3) Nothing in this Part restricts access to information provided by custom or practice prior to the effective date of this Part.

#### **Procedure for obtaining access**

**466 (1)** A person may obtain access to a record by

(a) making a request in writing to the municipality that has the custody or control of the record;

(b) specifying the subject matter of the record requested with sufficient particulars to enable an individual familiar with the subject matter to identify the record; and

(c) paying any fees required pursuant to this Part.

(2) The applicant may ask to examine the record or ask for a copy of the record.

#### **Duty of responsible officer**

**467 (1)** Where a request is made pursuant to this Part for access to a record, the responsible officer shall

(a) make every reasonable ~~effect~~ [effort] to assist the applicant and to respond without delay to the applicant openly, accurately and completely; and

(b) consider the request and give written notice to the applicant of the decision with respect to the request.

(2) The responsible officer shall respond in writing to the applicant within thirty days after the application is received, *and the*

*applicant has met the requirements of clauses (b) and (c) of subsection (1) of Section 466, stating*

(a) whether the applicant is entitled to the record or part of the record and

(i) where the applicant is entitled to access, stating that access will be given on payment of the prescribed fee and setting out where, when and how, or the manner in which, access will be given, or

(ii) where access to the record or to part of the record is refused, the reasons for the refusal and the provision of this Part on which the refusal is based;

(b) that the record is not in the custody or control of the municipality; or

(c) where the record would contain information exempted pursuant to Section 475 if the record were in the custody or control of the municipality, that confirmation or denial of the existence of the record is refused,

and stating

(d) the name, title, business address and business telephone number of an officer or employee of the municipality who can answer the applicant's questions about the decision; and

(e) that the applicant may ask for review by a review officer within sixty days after the applicant is notified of the decision.

**(3)** A responsible officer who fails to give a written response is deemed to have given notice of a decision to refuse to give access to the record thirty days after the application was received.

**(4)** A responsible officer may refuse to disclose to an applicant information

(a) that is published and available for purchase by the public; or

(b) that is to be published or released to the public within thirty days after the applicant's request is received.

(5) A responsible officer shall notify an applicant of the publication or release of information that the officer has refused to disclose.

(6) Where the information is not published or released within thirty days after the applicant's request is received, the responsible officer shall reconsider the request as if it were a new request received on the last day of that period, but the information shall not be refused solely because it is due to be published or released to the public.

**Duties of responsible officer where access given**

**468 (1)** Where an applicant is informed that access will be given, the responsible officer shall

(a) where the applicant has asked for a copy and the record can reasonably be reproduced,

(i) provide a copy of the record, or part of the record, with the response, or

(ii) give the applicant reasons for delay in providing the record; or

(b) where the applicant has asked to examine the record or where the record cannot reasonably be reproduced, permit the applicant to examine the record or part of the record.

(2) A responsible officer may give access to a record that is a microfilm, film, sound recording, or information stored by electronic or other technological means by

(a) permitting the applicant to examine a transcript of the record;

(b) providing the applicant with a copy of the transcript of the record;

(c) permitting, in the case of a record produced for visual or aural reception, the applicant to view or hear the record or providing the applicant with a copy of it; or

(d) permitting, in the case of a record stored by electronic or other technological means, the applicant to access the record or providing the applicant a copy of it.

(3) A responsible officer shall create a record for an applicant if

(a) the record can be created from a machine-readable record in the custody or under the control of the municipality using its normal computer hardware and software and technical expertise; and

(b) creating the record would not unreasonably interfere with the operations of the municipality.

#### **Extension of time for response**

**469** (1) The responsible officer may extend the time provided for responding to a request for up to thirty days or, with a review officer's permission, for a longer period if

(a) the applicant does not give enough detail to enable the municipality to identify a requested record;

(b) a large number of records is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the municipality; or

(c) more time is needed to consult with a ~~thirty~~ [third] party ~~of~~ [or] other municipality before the responsible officer can decide whether or not to give the applicant access to a requested record.

(2) Where the time is extended, the responsible officer shall tell the applicant

- (a) the reason;
- (b) when a response can be expected; and
- (c) that the applicant may complain about the extension to a review officer.

### **Transfer of request**

**470 (1)** Within ten days after a request for access to a record is received, the responsible office of a municipality may transfer the request and, if necessary, the record to a municipal body to which the municipality appoints one or more members and which is not under the authority of the municipality, *of such longer period as the Review Officer may determine*, if

- (a) the record was produced by or for the municipal body;
- (b) the municipal body was the first to obtain the record; or
- (c) the record is in the custody, or under the control of, the municipal body.

(2) Where a request is transferred pursuant to subsection (1)

- (a) the responsible officer who transferred the request shall notify the applicant of the transfer; and
- (b) the responsible officer to which the request is transferred shall respond to the applicant in accordance with this Part not later than thirty days after the request is received.

**Fees**

**471 (1)** An applicant who makes a request pursuant to this Part shall pay to the municipality the prescribed application fee.

**(2)** A responsible officer may require an applicant who makes a request to pay fees for the following services:

- (a)** locating, retrieving and producing the record;
- (b)** preparing the record for disclosure;
- (c)** shipping and handling the record;
- (d)** providing a copy of the record.

**(3)** An applicant is not required to pay a fee for the first hour spent locating and retrieving a record.

**(4)** No fee shall be charged for a request for the applicant's own personal information.

**(5)** Where an applicant is required to pay fees for services, the responsible officer shall give the applicant an estimate of the total fee before providing the services.

**(6)** The responsible officer may require the applicant to pay the estimated fee prior to providing the services.

**(7)** On request of the applicant, the responsible officer may excuse an applicant from paying all or part of a fee referred to in subsection (2) if, in the opinion of the responsible officer, the applicant cannot afford the payment or for any other reason it is fair to excuse payment.

**(8)** The fees that applicants are required to pay for services shall not exceed the actual costs of the services.

**Intergovernmental affairs**

**472 (1)** A responsible officer may refuse to disclose information to an applicant, if the disclosure could reasonably be expected to

(a) harm the conduct by the municipality of relations between the municipality and any of the following or their agencies:

(i) the Government of Canada or a province of Canada,

(ii) the Government of Nova Scotia,

(iii) another municipality,

(iv) a school board,

(v) an aboriginal government; or

(b) reveal information received in confidence from a government, body or organization listed in clause (a), or their agencies, unless the government, body, organization or its agency consents to the disclosure or makes the information public.

(2) The responsible officer shall not disclose information referred to in subsection (1) without the consent of the council.

(3) This Section does not apply to information in a record that has been in existence for fifteen or more years.

#### **Refusal to disclose information**

**473** (1) The responsible officer may refuse to disclose to an applicant information that would disclose the minutes or substance of the deliberations of a meeting of the council, village commission or service commissioners or of the members of the municipal body held in private, as authorized by law.

(2) Subsection (1) does not apply to

(a) information in a record that has been in existence for ten or more years; or

(b) background information in a record, the purpose of which is to present explanations or analysis to the council, committee, agency, authority, board or commission for its consideration in making a decision, if

- (i) the decision has been made public,
- (ii) the decision has been implemented, or
- (iii) five or more years have passed since the decision was made or considered.

**Refusal to disclose information**

**474 (1)** The responsible officer may refuse to disclose information that would reveal advice, recommendations or draft resolutions, policies, by-laws or special legislation developed by or for the

- (a) council, village commission or service commissioners; or
- (b) members of the municipal body.

**(2)** The responsible officer shall not refuse to disclose background information used by the municipality.

**(3)** This Section does not apply to information in a record that has been in existence for five or more years.

**Refusal to disclose information**

**475 (1)** The responsible officer may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

- (a) harm law enforcement;
- (b) prejudice the defence of Canada or of any foreign state allied to, or associated with, Canada or harm the detection, prevention or suppression of espionage, sabotage or terrorism;

(c) harm the effectiveness of investigative techniques or procedures currently used, or likely to be used, in law enforcement;

(d) reveal the identity of a confidential source of law-enforcement information;

(e) endanger the life or physical safety of a law-enforcement officer or any other person;

(f) reveal any information relating to, or used in, the exercise of prosecutorial discretion;

(g) deprive a person of a right to a fair trial or impartial adjudication;

(h) reveal a record that has been confiscated from a person by a peace officer in accordance with an enactment;

(i) be detrimental to the proper custody, control or supervision of a person under lawful detention;

(j) facilitate the commission of an offence contrary to an enactment; or

(k) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

(2) The responsible officer may refuse to disclose information to an applicant if the information is

(a) in a law-enforcement record and the disclosure would be an offence pursuant to an enactment;

(b) in a law-enforcement record and the disclosure could reasonably be expected to expose, to civil liability, the author of the record or a person who has been quoted or paraphrased in the record; or

(c) about the history, supervision or release of a person who is in custody, or under supervision, and the disclosure could reasonably be expected to harm the proper custody or supervision of that person.

(3) After a police investigation is completed, the responsible officer shall not refuse to disclose to an applicant the reasons for a decision not to prosecute if the applicant is aware of the police investigation, but nothing in this subsection requires disclosure of information mentioned in subsections (1) or (2).

#### **Solicitor-client privilege**

**476** The responsible officer may refuse to disclose to an applicant information that is subject to solicitor-client privilege.

#### **Financial or economic interests**

**477 (1)** The responsible officer may refuse to disclose to an applicant information, the disclosure of which, could reasonably be expected to harm the financial or economic interests of the municipality, another municipality or the Government of the Province or the ability of the Government of the Province to manage the economy and, without restricting the generality of the foregoing, may refuse to disclose the following information:

(a) trade secrets of the municipality, another municipality or the Government of the Province;

(b) financial, commercial, scientific or technical information that belongs to the municipality, another municipality or the Government of the Province and that has, or is reasonably likely to have, monetary value;

(c) plans that relate to the management or personnel of or the administration of the municipality or another municipality and that have not yet been implemented or made public;

(d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;

(e) information about negotiations carried on by or for the municipality or another municipality or the Government of the Province.

(2) The responsible officer shall not refuse to disclose, pursuant to subsection (1) the results of product or environmental testing carried out by or for the municipality, unless the testing was done

(a) for a fee as a service to a person, a group of persons or an organization other than the municipality; or

(b) for the purpose of developing methods of testing.

### **Health and safety**

**478 (1)** The responsible officer may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health; or

(b) interfere with public safety.

(2) The responsible officer may refuse to disclose to an applicant personal information about the applicant, if the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's safety or mental or physical health.

### **Conservation**

**479** The responsible officer may refuse to disclose information to an applicant, if the disclosure could reasonably be expected to result in damage to, or interfere with the conservation of

- (a) fossil sites, natural sites or sites that have an anthropological or heritage value;
- (b) an endangered, threatened or vulnerable species, subspecies or race of plants, vertebrates or invertebrates; or
- (c) any other rare or endangered living resources.

**Refusal to disclose information**

**479A** *The responsible officer may refuse to disclose*

- (a) *any information of any kind obtained by a conciliation board, conciliation officer or mediator appointed pursuant to the Civil Service Collective Bargaining Act, the Corrections Act, the Highway Workers Collective Bargaining Act, the Teachers' Collective Bargaining Act or the Trade Union Act or by an employee of the Department of Labour or an employee, appointee or member of the Civil Service Employee Relations Board, the Correctional Facilities Employee Relations Board, the Highway Workers Employee Relations Board or the Labour Relations Board for the purpose of any of those Acts or in the course of carrying out duties under any of those Acts;*
- (b) *any report of a conciliation board or conciliation officer appointed pursuant to any of those Acts;*
- (c) *any testimony or proceedings before a conciliation board appointed pursuant to any of those Acts.*

**Personal information**

**480 (1)** The responsible officer shall refuse to disclose personal information to an applicant, if the disclosure would be an unreasonable invasion of a third party's personal privacy.

**(2)** In determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the responsible officer shall consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the municipality to public scrutiny;

(b) the disclosure is likely to promote public health and safety or to promote the protection of the environment;

(c) the personal information is relevant to a fair determination of the applicant's rights;

(d) the disclosure will assist in researching the claims, disputes or grievances of aboriginal people;

(e) the third party will be exposed unfairly to financial or other harm;

(f) the personal information has been supplied in confidence;

(g) the personal information is likely to be inaccurate or unreliable; and

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

**(3)** A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information

(a) relates to a medical, dental, psychiatric, psychological or other health-care history, diagnosis, condition, treatment or evaluation;

(b) was compiled, and is identifiable as, part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

(c) relates to eligibility for income assistance or social service benefits or to the determination of benefit levels;

(d) relates to employment or educational history;

(e) was obtained on a tax return or gathered for the purpose of collecting a tax;

(f) describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

(g) consists of personal recommendations or evaluations, character references or personnel evaluations;

(h) indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations; or

(i) consists of the third party's name together with the third party's address or telephone number and is to be used for mailing lists or solicitations by telephone or other means.

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

(a) the third party has, in writing, consented to or requested the disclosure;

(b) there are compelling circumstances affecting anyone's health or safety;

(c) an enactment authorizes the disclosure;

(d) the disclosure is for a research or statistical purpose and is in accordance with this Part;

(e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a municipality;

(f) the disclosure reveals the amount of taxes or other debts due by the third party to the municipality;

(g) the disclosure reveals financial and other similar details of a contract to supply goods or services to a municipality;

(h) the information is about expenses incurred by the third party while travelling at the expense of a municipality;

(i) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a municipality, not including personal information supplied in support of the request for the benefit; or

(j) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a municipality, not including personal information that is supplied in support of the request for the benefit or that relates to eligibility for or the level of income assistance or social service benefits.

(5) On refusing to disclose personal information supplied in confidence about an applicant, the responsible officer shall give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information, and may allow the third party to prepare the summary of personal information.

**Confidential information**

**481 (1)** The responsible officer shall, unless the third party consents, refuse to disclose to an applicant information

(a) that would reveal

(i) trade secrets of a third party, or

(ii) commercial, financial, labour relations, scientific or technical information of a third party;

(b) that is supplied, implicitly or explicitly, in confidence; and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position, or interfere significantly with the negotiating position, of the third party,

(ii) result in similar information no longer being supplied to the municipality when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person or organization, or

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour-relations dispute.

(2) The responsible officer shall refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax, unless the third party consents.

(3) The responsible officer shall disclose to an applicant a report prepared in the course of inspections by an agency that is authorized to enforce compliance with an enactment.

**Notice to third party**

**482 (1)** When a responsible officer receives a request for access to a record that contains or may contain information of or about a third party that cannot be disclosed, the responsible officer shall, where

practicable, promptly give the third party a notice

(a) stating that a request has been made by an applicant for access to a record containing information that disclosure of which may affect the interests, or invade the personal privacy, of the third party;

(b) describing the contents of the record; and

(c) stating that, within fourteen days after the notice is given, the third party may, in writing, consent to the disclosure or may make written representations to the responsible officer explaining why the information should not be disclosed.

***(1A) Notwithstanding subsection (1), that subsection does not apply if***

***(a) the responsible officer decides, after examining the request, any relevant records and the views or interests of the third party respecting the disclosure requested, to refuse to disclose the record; or***

***(b) where the regulations so provide, it is not practical to give notice pursuant to that subsection.***

**(2)** When notice is given pursuant to subsection (1), the responsible officer shall also give the applicant a notice stating that

(a) the record requested by the applicant contains information the disclosure of which may affect the interests or invade the personal privacy of a third party; ***and***

(b) the third party is being given an opportunity to make representations concerning disclosure.

(c) ***deleted.***

(3) Within thirty days after notice is given to an applicant, the responsible officer shall decide whether to give access to the record or to part of the record, but no decision may be made before the earlier of

(a) fifteen days after the day notice is given; or

(b) the day a response is received from the third party.

**(3A) *For greater certainty, the time limited by subsection (2) of Section 467 for responding to a request for access to a record is not extended by reason only that a notice is given to an applicant pursuant to subsection (2) of this Section, but that time may be extended pursuant to Section 469.***

**(3B) *In complying with subsections (1) and (2), the municipality shall not***

***(a) disclose the name of the applicant to the third party without the consent of the applicant; or***

***(b) disclose the name of the third party to the applicant without the consent of the third party.***

(4) On reaching a decision, the responsible officer shall give written notice of the decision to the applicant and the third party.

(5) Where the responsible officer decides to give access to the record or part of the record,

(a) the notice shall state that the applicant will be given access after twenty days, unless, in that time, the third party asks for a review pursuant to this Part;

(b) the notice shall state that the third party may ask for a review pursuant to this Part within twenty days of the notice; and

(c) access shall not be provided until the expiry of the twenty day period.

*(6) Notwithstanding anything contained in this Section, the responsible officer who has, pursuant to this Section, given notice to a third party of a request for access to a record may, with the consent of the third party, give access to the record to the person who has made the request before the expiration of the time limited by subsection (3) for the third party to ask for a review.*

#### **Collection of personal information**

**483 (1)** Personal information shall not be collected by, or for, a municipality unless

(a) the collection of that information is expressly authorized by, or pursuant to, an enactment;

(b) that information is collected for the purpose of law enforcement; or

(c) that information relates directly to, and is necessary for, an operating program or activity of the municipality.

**(2)** Where an individual's personal information will be used by a municipality to make a decision that directly affects the individual, the municipality shall make every reasonable effort to ensure that the information is accurate and complete.

**(3)** The responsible officer shall protect personal information by making reasonable security arrangements against such risks as ~~authorized~~ *unauthorized* access, collection, use, disclosure or disposal.

**(4)** Where a municipality uses an individual's personal information to make a decision that directly affects the individual, the municipality shall retain that information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it.

#### **Request to correct error or omission**

**484 (1)** An applicant who believes there is an error or omission in the applicant's personal information may request the responsible officer to correct the information.

(2) Where no correction is made in response to a request, the responsible officer shall annotate the information with the correction that was requested but not made.

(3) On correcting or annotating personal information pursuant to this Section, the responsible officer shall notify any other municipality or any third party to whom that information has been disclosed during the one-year period before the correction was requested.

(4) On being notified of a correction or annotation of personal information, a municipality shall make the correction or annotation on any record of that information in its custody or under its control.

### **Use and disclosure of personal information**

**485** (1) A municipality may use personal information only

(a) for the purpose for which that information was obtained or compiled, or for a use compatible with that purpose;

(b) if the individual the information is about has identified the information and has consented to the use; or

(c) for a purpose for which that information may be disclosed to the municipality pursuant to this Section.

(2) A municipality may disclose personal information only

(a) in accordance with this Part or as provided pursuant to another enactment;

(b) if the individual the information is about has identified the information and consented in writing to its disclosure;

(c) for the purpose for which it was obtained or compiled, or a use compatible with that purpose;

(d) for the purpose of complying with an enactment or with a treaty, arrangement or agreement made pursuant to an enactment;

(e) for the purpose of complying with a subpoena, warrant, summons or order issued or made by a court, person or body with jurisdiction to compel the production of information;

(f) to an officer or employee of a municipality if the information is necessary for the performance of the duties of, or for the protection of the health or safety of, the officer or employee;

(g) to a municipality to meet the necessary requirements of municipal operation;

(h) for the purpose of

(i) collecting a debt or fine owing by an individual to the municipality, or

(ii) making a payment owing by the municipality to an individual;

(i) to the auditor for audit purposes;

(j) to a representative of the bargaining agent who has been authorized in writing by the employee, whom the information is about, to make an inquiry;

(k) to the Public Archives of Nova Scotia, or the archives of a municipality, for archival purposes;

(l) to a municipality or a law-enforcement agency in Canada to assist in an investigation

(i) undertaken with a view to a law-enforcement proceeding, or

(ii) from which a law-enforcement proceeding is likely to result;

(m) if the information is disclosed by a law-enforcement agency to

(i) another law-enforcement agency in Canada, or

(ii) a law-enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority;

(n) if the responsible officer determines that compelling circumstances exist that affect anyone's health or safety;

(o) so that the next of kin or a friend of an injured, ill or deceased individual may be contacted; or

(p) for research, archival and historical purposes as provided in this Section.

**(3)** A use of personal information is a use compatible with the purpose for which the information was obtained, if the use

(a) has a reasonable and direct connection to that purpose; and

(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the municipality that uses the information or to which the information is disclosed.

**(4)** A municipality may disclose personal information for a research purpose, including statistical research, if

(a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form;

(b) any record linkage is not harmful to the individuals that information is about and the benefits to be derived from the record linkage are clearly in the public interest;

(c) the responsible officer has approved conditions relating to

(i) security and confidentiality,

(ii) the removal or destruction of individual identifiers at the earliest reasonable time, and

(iii) the prohibition of any subsequent use or disclosure of that information in individually identifiable form without the express authorization of the municipality; and

(d) the person to whom that information is disclosed has signed an agreement to comply with the approved conditions, this Part and any of the municipality's policies and procedures relating to the confidentiality of personal information.

(5) The Public Archives of Nova Scotia, or the archives of a municipality, may disclose personal information for archival or historical purposes where

(a) the disclosure would not be an unreasonable invasion of personal privacy;

(b) the disclosure is for historical research;

(c) the information is about someone who has been dead for twenty or more years; or

(d) the information is in a record that is in the custody or control of the archives and open for historical research on the coming into force of this Part.

**Disclosure in public interest**

**486 (1)** Whether or not a request for access is made, the responsible officer may disclose to the public, to an affected group of people or to an applicant information

(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people; or

(b) the disclosure of which is, for any other reason, clearly in the public interest.

**(2)** Before disclosing information pursuant to subsection (1), the responsible officer shall, if practicable, notify any third party to whom the information relates.

**(3)** Where it is not practicable to comply with subsection (2), the responsible officer shall mail a notice of disclosure to the last known address of the third party.

**Request by applicant for review**

**487 (1)** A person who makes any request for access or for correction of personal information may ask for a review of any decision, act or failure to act of the responsible officer that relates to the request.

**(2)** A third party notified of a request for access may ask for a review of any decision made about the request by the responsible officer.

**(3)** A person who makes a request pursuant to this Part for access to a record or for correction of personal information may, within thirty days after the person is notified of the decision or within thirty days after the date of the act or failure to act, appeal directly to the Supreme Court of Nova Scotia as provided in this Part, if no third party has been notified or if a third party who has been notified consents to that appeal.

**Procedure for request for review**

**488 (1)** A written request for a review shall be filed with a review officer

(a) within sixty days after the person asking for the review is notified of the decision;

(b) within sixty days after the date of the act or failure to act;

(c) by a third party, within twenty days after notice is given; or

(d) within a longer period allowed by the review officer.

(2) The failure of the responsible officer to respond in time to a request for access to a record is to be treated as a decision to refuse access to the record, but the time limit for filing a request for review does not apply.

**Copies of request and settlement of matter**

**489 (1)** On receiving a request for a review, a review officer shall forthwith give a copy to

(a) the responsible officer concerned;

(b) an applicant, if the review was requested by a third party; and

(c) any other person that the review officer considers appropriate.

(2) A review officer may try to settle a matter under review through mediation.

(3) Where a review officer is unable to settle a matter within thirty days through mediation, the review officer shall conduct a review.

**Review in private and nature of review**

**490 (1)** A review officer may conduct a review in private.

**(2)** The following persons are entitled to make representations to a review officer in the course of a review:

(a) the person who applies for the review;

(b) a third party or applicant who is entitled to notice pursuant to this Part;

(c) the responsible officer whose decision is the subject of the review; *and*

*(d) any other person the Review Officer considers appropriate.*

*(2A) Where, pursuant to clause (d) of subsection (2), the Review Officer considers that a person is an appropriate person to make representations in the course of a review of a decision of the responsible officer of a municipality, then, notwithstanding any other provision of this Act, that person*

*(a) is entitled to*

*(i) a copy of the report of the Review Officer pursuant to Section 492,*

*(ii) appeal the decision of the responsible officer pursuant to Section 494, and*

*(iii) written notice of an appeal under subsection (2) of Section 494; and*

*(b) is a party to the appeal to which the notice of appeal referred to in subclause (iii) of clause (a) relates.*

**(3)** A review officer may decide

(a) whether the representations are to be made

orally or in writing;

(b) whether a person is entitled to be present during a review or to have access to, or comment on, representations made to the review officer by any other person.

#### **Powers of review officer**

**491** Notwithstanding another Act of the Legislature, or any privilege that is available at law, a review officer may, in a review,

(1) (a) require to be produced and examine any record that is in the custody, or under the control, of the municipality named in the request made pursuant to this Part; and

(b) enter and inspect any premises occupied by the ~~public body~~ *municipality*.

(2) *A municipality shall comply with a requirement imposed by the Review Officer pursuant to clause (a) of subsection (1) within such time as is prescribed by the regulations.*

(3) *Where a municipality does not comply with a requirement imposed by the Review Officer pursuant to clause (a) of subsection (1) within the time limited for so doing by subsection (2), a judge of the Supreme Court of Nova Scotia may, on the application of the Review Officer, order the municipality to do so.*

(4) *In an application made pursuant to subsection (3), a judge may give such directions as the judge thinks fit, including ordering which persons shall be parties to the application, which persons shall be given notice of the application and the manner in which such notice shall be given.*

(5) *An order made pursuant to subsection (3) may contain such provisions and such terms and conditions as the judge thinks fit.*

**Duties of review officer on completing review**

**492 (1)** On completing a review, a review officer shall

(a) prepare a written report setting out the review officer's recommendations with respect to the matter and the reasons for those recommendations; and

(b) send a copy of the report to the responsible officer, and where the matter was referred to the review officer by

(i) an applicant, to the applicant and to any third party notified pursuant to this Part, or

(ii) a third party, to the third party and to the applicant.

(2) In the report, the review officer may make any recommendations with respect to the matter under review that the review officer considers appropriate.

**Duties of responsible officer on receipt of report**

**493 (1)** Within thirty days after receiving a report of a review officer, the responsible officer shall

(a) make a decision to follow the recommendation of the review officer or any other decision that the responsible officer considers appropriate; and

(b) give written notice of the decision to the review officer and the persons who were sent a copy of the report.

(2) Where the responsible officer does not follow the recommendation of the review officer, the responsible officer shall, in writing, inform the persons who were sent a copy of the report of the right to appeal the decision to the Supreme Court of Nova Scotia within thirty days of making the decision.

(3) Where the responsible officer does not give notice within the time required, the responsible officer is deemed to have refused to follow the recommendation of the review officer.

### **Appeal to Supreme Court**

**494 (1)** Within thirty days after receiving a decision of the responsible officer that does not follow the recommendation of the review officer, an applicant or a third party may appeal that decision to the Supreme Court of Nova Scotia.

*(1A) An appeal is deemed not to have been taken pursuant to this Section unless a notice of appeal is given to the Minister of Justice by the person taking the appeal.*

*(1B) Where a notice of appeal is given pursuant to subsection (1A), the Minister of Justice may become a party to the appeal by filing with the prothonotary of the Supreme Court of Nova Scotia a notice stating that the Minister of Justice is a party to the appeal.*

(2) The responsible officer who has refused a request for access to a record, or part of a record, shall, immediately on receipt of a notice of appeal by an applicant, give written notice of the appeal to any third party that the responsible officer

(a) has notified pursuant to this Part; or

(b) would have notified pursuant to this Part if the responsible officer had intended to give access to the record, or part of the record.

(3) The responsible officer who has granted a request for access to a record or part of a record shall, immediately on receipt of a notice of appeal by a third party, give written notice of the appeal to the applicant.

(4) An applicant or a third party who has been given notice of an appeal may appear as a party to the appeal.

(5) The review officer is not a party to an appeal.

(6) *Where the responsible officer decides to give access to a record or a part of a record after the Review Officer files a report setting out the Review Officer's recommendations respecting the matter, the responsible officer shall not give access until the time limited for a third party taking an appeal from the decision to the Supreme Court of Nova Scotia expires and*

(a) *no appeal has been taken by a third party from the decision within the time limited for so doing; or*

(b) *where an appeal has been taken within that time by a third party, it has subsequently been abandoned or withdrawn,*

*but, where an appeal is taken by a third party, the responsible officer shall not give access until either the decision of the responsible officer is upheld by an order of the Supreme Court and the order becomes final by lapse of time or the decision of the responsible officer is upheld by the highest authority to which any further appeal or appeals are taken.*

#### **Powers of Supreme Court**

**495 (1)** On an appeal, the Supreme Court of Nova Scotia may

(a) determine the matter *de novo*; and

(b) examine any record *in camera* in order to determine on the merits whether the information in the record may be withheld pursuant to this Part.

(2) Notwithstanding any other Part or any privilege that is available at law, the Supreme Court of Nova Scotia may, on an appeal, examine any record in the custody or under the control of a municipality, and no information shall be withheld from the Court on any grounds.

(3) The Supreme Court of Nova Scotia shall take every reasonable precaution, including, where appropriate, receiving representations *ex parte* and conducting hearings *in camera*, to avoid disclosure by the Court or any person of any information

(a) or other material, if the nature of the

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information or material could justify a refusal by a responsible officer to give access to a record or part of a record; or

(b) as to whether a record exists, if the responsible officer, in refusing to give access, does not indicate whether the record exists.

(4) The Supreme Court of Nova Scotia may disclose to the Minister of Justice or the Attorney General of Canada information that may relate to the commission of an offence pursuant to another enactment by an officer or employee of a municipality.

(5) Where the responsible officer has refused to give access to a record or part of it, the Supreme Court of Nova Scotia, if it determines that the responsible officer is not authorized to refuse to give access to the record, or part of it, shall

(a) order the responsible officer to give the applicant access to the record, or part of it, subject to any conditions that the Court considers appropriate; or

(b) make any other order that the Court considers appropriate.

(6) Where the Supreme Court of Nova Scotia finds that a record falls within an exemption, the Court shall not order the responsible officer to give the applicant access to the record, regardless of whether the exemption requires, or merely authorizes, the responsible officer to refuse to give access to the record.

#### **Exercise of right or power**

**496** Any right or power conferred on an individual by this Part may be exercised

(a) where the individual is deceased, by the individual's representative, if the exercise of the right or power relates to the administration of the individual's estate;

(b) where a personal guardian or property guardian has been appointed for the individual, by the guardian, if the exercise of

the right or power relates to the powers and duties of the guardian;

(c) where a power of attorney has been granted, by the attorney if the exercise of the right or power relates to the powers and duties of the attorney conferred by the power of attorney;

(d) where the individual is less than the age of majority, by the individual's legal custodian in situations where, in the opinion of the responsible officer, the exercise of the right or power would not constitute an unreasonable invasion of the privacy of the individual; or

(e) by a person with written authorization from the individual to act on the individual's behalf.

**Delegation of powers by responsible officer**

**497 (1)** The responsible officer may delegate to one or more officers of the municipality a power granted to, or a duty vested in, the responsible officer.

(2) A delegation

(a) shall be in writing; and

(b) may contain any limitations, restrictions, conditions or requirements that the responsible officer considers necessary or advisable.

**Burden of proof**

**498 (1)** At a review or appeal into a decision to refuse an applicant access to all or part of a record, the burden is on the responsible officer to prove that the applicant has no right of access to the record or part.

(2) Where the record or part that the applicant is refused access to contains personal information about a third party, the burden is on the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

(3) At a review or appeal into a decision to give an applicant access to all or part of a record containing information that relates

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to a third party

(a) in the case of personal information, the burden is on the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy; and

(b) in any other case, the burden is on the third party to prove that the applicant has no right of access to the record or part.

### **Limitation of liability**

**499** No action or other proceeding lies against the responsible officer or any person acting on behalf of, or under the direction of, the responsible officer for damages resulting from the

(a) disclosure in good faith of all, or part of, a record pursuant to this Part or any consequences of that disclosure; or

(b) failure to give any notice required pursuant to this Part, if reasonable care is taken to give the required notice.

### **Offence and penalty**

**500 (1)** Every person who maliciously collects or discloses personal information in contravention of this Part or the regulations is guilty of an offence and liable, on summary conviction, to a penalty of not more than five thousand dollars or to imprisonment for six months, or both.

*(1A) Every person who knowingly alters a record that is subject to a request in order to mislead the person who made the request is guilty of an offence and liable on summary conviction to a fine of not more than two thousand dollars or to imprisonment for six months, or both.*

(2) Section 4 of the *Summary Proceedings Act* does not apply to this Part.

### **Regulations**

**501 (1)** The Governor in Council may make regulations

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- (a) prescribing procedures to be followed in taking, transferring and processing requests for access;
- (b) prescribing or limiting fees to be paid pursuant to this Part;
- (c) prescribing additional circumstances in which a responsible officer may waive the payment of all, or any part, of a prescribed fee;
- (d) prescribing the categories of sites that are considered to have heritage or anthropological value;
- (e) prescribing requirements to be met with respect to disclosures of information to law enforcement agencies or investigative bodies;
- (f) prescribing the form and manner of a review pursuant to this Part;
- (g) prescribing the form and manner of an appeal pursuant to this Part;
- (h) prescribing any matter that is to be included in a notice that is required pursuant to this Part;
- (i) prescribing forms for the purpose of this Part;
- (j) prescribing any other matter or thing required or authorized by this Part or the *Freedom of Information and Protection of Privacy Act* to be prescribed in regulations;
- (k) respecting the application, with respect to this Part, of regulations made pursuant to the *Freedom of Information and Protection of Privacy Act*;
- (l) defining any word or expression used, but not defined, in this Part;
- (m) enlarging or restricting the meaning of any word or expression defined in this Part;

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(n) for any purpose contemplated by this Part;

(o) to carry out effectively the intent and purpose of this Part.

(2) The regulations made pursuant to the *Freedom of Information and Protection of Privacy Act* apply with respect to this Part with all necessary changes, unless the Governor in Council determines otherwise, by regulations made pursuant to subsection (1).

(3) A regulation may apply to all persons or bodies, or to a class of persons or bodies, to whom this Part applies and there may be different regulations for different classes of persons.

(4) The exercise by the Governor in Council of the authority contained in this Section is regulations within the meaning of the *Regulations Act*.

**Amendments apply**

**502** Any amendments to the *Freedom of Information and Protection of Privacy Act* apply *mutatis mutandis* to this Part to the extent that they may be made to apply to this Part.