

Appendix 3-L Intent of the *Freedom of Information and Protection of Privacy Act*

The overall intent of the Nova Scotia *Freedom of Information and Protection of Privacy Act* is the following:

1. ensure that public bodies 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 public bodies, and
 - (v) providing for an independent review of decisions made pursuant to this Act
2. provide for the disclosure of all government information (with limited exemptions) to
 - (i) facilitate informed public participation in policy formulation
 - (ii) ensure fairness in government decision-making
 - (iii) permit the airing and reconciliation of divergent views
3. protect the privacy of individuals with respect to personal information about themselves as well as providing access by individuals to their own personal information, and preventing unauthorized collection, use, and disclosure of personal information.

The FOIPOP Act provides for the disclosure of all government information. There are limited and specified exceptions to the rights of access:

1. PUBLIC PRIVATE PARTNERSHIPS (Section 5(2A))

Under Section 5(2A) “public private partnership” contracts are required to be disclosed with some exceptions. These are executive contracts and must involve a substantial transfer of risk to a person, including a risk related to the operation or financing or both of government activities and the contract must be designated through the appropriate procedures of the public body within particular time limits. However, the disclosure requirement does not include trade secrets, financial and business information of the contracting party, or any records that would endanger the health or safety of persons or groups of persons.

2. INTERGOVERNMENTAL AFFAIRS (Section 12)

If the head of the public body believes that information has been received in confidence from another government in Canada or that disclosure of the information could reasonably be expected to harm intergovernmental relations, then the information may be withheld. Records more than fifteen years old are not covered. Consent of the Governor-in-Council is required to release records to which the exemption applies.

3. DELIBERATIONS OF EXECUTIVE COUNCIL (Section 13)

The department head may refuse to disclose information revealing the substance of Executive Council or its committees deliberations including advice, recommendations, policy considerations, draft legislation or regulations. Information in records over ten years old are not covered, nor is background information whose purpose is to present explanations or analysis and used to make a decision, if that decision has been made public, implemented, or it has been more than five years since the decision was made or considered. A definition of background information is contained in Section 3.

4. ADVICE TO PUBLIC BODY OF MINISTER (Section 14)

The head has the option of refusing to release information that would reveal advice, recommendations, or draft regulations. This does not apply to background information or information more than five years old. However, background information does not include a program proposal or a proposal to change a program, if the proposal has not yet been approved or rejected.

5. LAW ENFORCEMENT (Section 15)

This discretionary exemption applies to a broad range of information which has a connection to law enforcement activities, trials, law suits, adjudications, and security arrangements. For specific law enforcement information that may be exempt, please refer to Section 15 of the Act. The exception may not be used to withhold from an applicant the reasons for a decision not to prosecute if the applicant is aware of a police investigation. See the sample letter on page 59 for special procedures to be used under clause 7(2)(c) where appropriate in responding to an application for information which may be exempted under Section 15. This involved information to which the exemption applies, but under Section 7(2)(c), its existence can be neither confirmed nor denied.

6. SOLICITOR-CLIENT PRIVILEGE (Section 16)

The head may choose to withhold information covered by solicitor-client privilege, which is the same privilege as that available at common law.

All direct communications between a solicitor and client or their agents/employees made for the purpose of obtaining professional legal advice or in contemplation of litigation is subject to solicitor-client privilege. Factors that have been considered by the Review Officer are noted in Review Reports 97-75 and 97-76.

Solicitor-client privilege can be waived only by the client. The advice and opinion of the solicitor should be obtained before any waiver of privilege is contemplated.

7. FINANCIAL OR ECONOMIC INTERESTS (Section 17)

Information which could harm the financial **or economic interests of the “public body” need not be** disclosed. The exemption provides a list of examples of types of information that may be withheld. Included are negotiations of the public body and the possible premature disclosure of projects or proposals. However, for the exemption to be legitimately invoked, there must be damage to the financial or economic interests of the province. If the information is in the form of product or environmental testing carried out by or for the public body, the information must (with two rare exceptions) be released.

8. HEALTH AND SAFETY (Section 18)

If the department head feels disclosure would hurt anyone (including the applicant) physically or mentally, or interfere with public safety, then the information may be withheld.

9. CONSERVATION (Section 19)

The department head can choose to refuse the release of information that might damage various heritage or natural sites, or endangered species or resources.

10. CLOSED MEETINGS OF LOCAL PUBLIC BODIES (Section 19A)

Where an “enactment” authorizes a meeting of a local public body (i.e., university, school board, or hospital) to be held in camera, the public body may refuse to disclose information that would reveal the “substance of deliberations” of the meeting. It may also refuse to disclose draft resolutions, by-laws, or other “legal instruments.” The exemption does not apply if the material has been considered later in an open meeting or 15 years have passed.

11. ACADEMIC RESEARCH (Section 19B)

Details of “academic research” conducted by an “employee” of the “public body” in the course of their employment may also be exempted. However, the exemption does not extend to the title of the research project and the amount of funding.

12. CERTAIN UNIVERSITY PERSONAL INFORMATION (Section 19C)

Evaluative or opinion material “in the custody or under the control” of a university and compiled solely for the purpose of determining an applicant’s suitability for appointment, promotion, tenure, academic program admission, or an honour or award, may also be exempted.

13. CERTAIN HOSPITAL RECORDS (Section 19D)

Hospital records, except patient records, used for or arising from any study, research, or program for the purpose of education or improvement in medical care or practice may also be exempted. This provision is similar to Section 60(1) of the *Nova Scotia Evidence Act*, but applies to records rather than the compellability of an individual to testify in any legal proceeding.

14. LABOUR CONCILIATION RECORDS (Section 19E)

Records relating to information of any kind obtained by a conciliation board, conciliation officer or mediator, or certain specified officers appointed under certain statutes may also be exempted. Also, reports, testimony, or proceedings may also be exempted if they meet certain conditions under the section.

15. PERSONAL INFORMATION (Section 20)

Personal information must not be released to an applicant if it would be an “unreasonable invasion of a third party’s personal privacy.” Section 20 goes into great detail about what factors are to be considered, as well as what presumptions and deeming provisions relative to an “unreasonable invasion of a third party’s personal privacy.” **If you refuse to disclose personal information supplied in confidence** about an application by a third party, under subsection 20(5) you are required to give a summary of the information unless it identifies the third party. The third party may also be allowed to prepare that summary.

16. CONFIDENTIAL BUSINESS INFORMATION (Section 21)

This is also a mandatory exemption it applies to the records subject to the application. For this exemption to apply, the records must meet a three-part test. The records must meet the definition of Section 21(1)(a),(b) and (c). Confidential business information is also treated in the same way as personal information for purposes of third party notice. See page 18 for the procedure. Routine inspections are not considered confidential information. It should be noted, as well, that information prepared or obtained for a tax return must not be disclosed.