

# **Freedom of Information and Protection of Privacy Act**

## CHAPTER 5 OF THE ACTS OF 1993

*as amended by*

1999 (2nd Sess.), c. 11; 2002, c. 5, ss. 18, 19;  
2004, c. 4, s. 112; 2007, c. 9, ss. 8, 9; 2008, c. 35, s. 10;  
N.S. Reg. 205/2009, s. 2; 2010, c. 35, s. 36; 2010, c. 41, s. 111;  
2011, c. 67, s. 11; 2012, c. 3, s. 21; 2012, c. 24, s. 25; 2012, c. 62, s. 3



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2004, c. 4, s. 112; 2007, c. 9, ss. 8, 9; 2008, c. 35, s. 10;  
N.S. Reg. 205/2009, s. 2; 2010, c. 35, s. 36; 2010, c. 41, s. 111;  
2011, c. 67, s. 11; 2012, c. 3, s. 21; 2012, c. 24, s. 25; 2012, c. 62, s. 3

**An Act Respecting the Right of Access to  
Documents of Public Bodies in Nova Scotia  
and a Right of Privacy with Respect to  
Personal Information Held by  
Public Bodies in Nova Scotia**

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**Short title**

**1** This Act may be cited as the *Freedom of Information and Protection of Privacy Act*. 1993, c. 5, s. 1.

**Purpose of Act**

**2** The purpose of this Act is

(a) to 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; and
- (b) to provide for the disclosure of all government 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,
  - (iii) permit the airing and reconciliation of divergent views;
- (c) to protect the privacy of individuals with respect to personal information about themselves held by public bodies and to provide individuals with a right of access to that information. 1993, c. 5, s. 2.

**Interpretation****3****(1)**

In this Act,

- (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 public body 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 public body,
  - (ix) a feasibility or technical study, including a cost estimate, relating to a policy or project of a public body,
  - (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 public body, 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 head of the public body;
- (b) “employee”, in relation to a public body, includes a person retained under an employment contract to perform services for the public body;
- (c) “head”, in relation to a public body, means
- (i) where the public body is a department, branch or office of the Government of Nova Scotia, the minister who presides over it,
- (ii) where the public body is a board, commission, foundation, agency, tribunal, association or other body of persons reporting directly to a minister in respect of its day-to-day operations, the minister,
- (iii) where the public body is a board, commission, foundation, agency, tribunal, association or other body of persons not reporting directly to a minister in respect of its day-to-day operations, the chair or presiding officer of the board, commission, foundation, agency, tribunal, association or other body of persons,
- (iiia) where the public body is a local public body, the person or group of persons designated pursuant to Section 49A as the head, or
- (iv) in any other case, the person designated by the regulations as the head of the public body;
- (ca) “hospital” means any agency, association, board, commission, corporation, office, society or other body that is designated as a hospital pursuant to the *Hospitals Act*;
- (d) “judicial administration record” means a record containing information relating to a judge, including
- (i) a scheduling of judges and trials,
- (ii) content of judicial training programs, and
- (iii) statistics of judicial activity prepared by or for a judge;
- (e) “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;
- (ea) “local public body” means
  - (i) a hospital,
  - (ii) a university,
  - (iii) a school board as defined in the *Education Act*,
  - (iv) the Collège de l’Acadie established by the *Community Colleges Act*, or
  - (v) the Nova Scotia Community College established by the *Community Colleges Act*;
- (f) “minister” means a member of the Executive Council;
- (g) “Minister” means the Minister of Justice;
- (h) “municipal unit” means a city, an incorporated town, a municipality of a county or district or village commissioners incorporated pursuant to the *Village Service Act* or to whom that Act applies and includes any agency, board or commission thereof;
- (i) “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;
- (j) “public body” means

(i) a Government department or a board, commission, foundation, agency, tribunal, association or other body of persons, whether incorporated or unincorporated, all the members of which or all the members of the board of management or board of directors of which

(A) are appointed by order of the Governor in Council, or

(B) if not so appointed, in the discharge of their duties are public officers or servants of the Crown,

and includes, for greater certainty, each body referred to in the Schedule to this Act but does not include the Office of the Legislative Counsel,

(ii) the Public Archives of Nova Scotia,

(iii) a body designated as a public body pursuant to clause (f) of subsection (1) of Section 49, or

(iv) a local public body;

(k) “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;

(l) “Review Officer” means the Review Officer appointed pursuant to Section 33;

(m) “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, or

(ii) a public body;

(n) “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;

(o) “university” means a person located in the Province, including a natural person, an association of natural persons, a partnership or a corporation that is authorized by the *Degree Granting Act* to grant any recognition of academic achievement that is called a degree, including degrees of bachelor, master and doctorate. 1993, c. 5, s. 3; 1999 (2nd Sess.), c. 11, s. 1.

#### **Amendment of Schedule**

**3A (1)** The Governor in Council may, by regulation, amend the Schedule to this Act by

- (a) adding the name of a body to the Schedule;
- (b) deleting the name of a body from the Schedule;
- (c) changing the name of a body, as set out in the Schedule, to any other name that the body is given.

**(2)** For greater certainty, nothing in subsection (1) means or shall be construed as meaning that a school board as defined in the *Education Act* or a university is a public body before subclauses (ii) and (iii) of clause (ea) of Section 3 come into force by reason only of being referred to in the Schedule to this Act. 1999 (2nd Sess.), c. 11, s. 2.

#### **Application of Act**

**4 (1)** This Act applies to all records in the custody or under the control of a public body, including court administration records.

- (2)** Notwithstanding subsection (1), this Act 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 record in a court file, a record of a judge of the Court of Appeal, Supreme Court, Family Court or Provincial Court, a judicial administration record or a record relating to support services provided to the judges of those courts;
  - (d) a note, communication or draft decision of a person acting in a judicial or quasi-judicial capacity;
  - (e) a record that is created by or is in the custody of the Conflict of Interest Commissioner appointed pursuant to the *Conflict of Interest Act*, the Ombudsman or the Review Officer and that relates to the exercise of that person’s functions pursuant to an enactment;
  - (f) a record of a question that is to be used on an examination or test;

(g) material placed in the custody of the Public Archives of Nova Scotia by or for a person, agency or other organization, other than a public body;

(h) material placed in the archives of a public body by or for a person, agency or other organization other than the public body;

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

(j) a record of each representation made on behalf of a public body to the Review Officer in the course of a review pursuant to Section 32 and all material prepared for the purpose of making the representation.

**(3)** This Act 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 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. 1993, c. 5, s. 4; 1999 (2nd Sess.), c. 11, ss. 3, 23; 2010, c. 35, s. 36.

#### **Conflict with other enactments**

**4A (1)** Where there is a conflict between a provision of this Act 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 Act 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 Act:

(a) subsection 121(2) of the *Canada-Nova Scotia Offshore Resources Accord Implementation (Nova Scotia) Act*;

(aa) subsection 5(2) of the *Child Pornography Reporting Act*;

(b) Section 19 of the *Consumer Reporting Act*;

(c) Section 51 of the *Corporation Capital Tax Act*;

(d) Section 7 of the *Emergency 911 Act*;

- (e) Section 19 of the *Forests Act*;
  - (f) Section 17 and subsection 104(2) of the *Health Protection Act*;
  - (g) *repealed 2010, c. 41, s. 111.*
  - (ga) Section 53A of the *Interjurisdictional Support Orders Act*;
  - (h) subsection (7) of Section 9 of the *Juries Act*;
  - (i) Section 28 of the *Labour Standards Code*;
  - (j) Section 32 of the *Maintenance Enforcement Act*;
  - (k) subsection (2) of Section 87 and Sections 150 and 175 of the *Mineral Resources Act*;
  - (l) subsection (5) of Section 7B, subsection (8) of Section 7C, subsection (6) of Section 98 and subsection (3) of Section 278E of the *Motor Vehicle Act*;
  - (m) Sections 53, 61 and 62 of the *Occupational Health and Safety Act*;
  - (n) subsection (3) of Section 11 of the *Pension Benefits Act*;
  - (o) Sections 72 and 100 of the *Petroleum Resources Regulations* made pursuant to the *Petroleum Resources Act*;
  - (p) subsection (4) of Section 21 of the *Primary Forest Products Marketing Act*;
  - (q) Section 48 of the *Public Trustee Act*;
  - (r) Section 9 of the *Statistics Act*;
  - (s) subsection (3) of Section 9 of the *Procedure Regulations* made pursuant to the *Trade Union Act*;
  - (t) subsection (8) of Section 37 and Section 45 of the *Vital Statistics Act*;
  - (u) 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

**10**                      **freedom of information and protection of privacy**                      **1993, c. 5**

- (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)**     *repealed 2010, c. 41, s. 111.*

1999 (2nd Sess.), c. 11, s. 4; 2004, c. 4, s. 112; 2008, c. 35, s. 10; 2010, c. 41, s. 111; 2011, c. 67, s. 11; 2012, c. 24, s. 25; 2012, c. 62, s. 3.

**ACCESS TO RECORDS**

**Right of access**

**5 (1)**     A person has a right of access to any record in the custody or under the control of a public body upon complying with Section 6.

**(2)**     The right of access to a record does not extend to information exempted from disclosure pursuant to this Act, 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 Act, where the record is an executed contract

- (a) in which provision is made for
  - (i) in the case of an agreement executed by the Province, the Province,
  - (ii) in the case of an agreement executed by a board, commission, foundation, agency, tribunal, association or other body of persons, within the meaning of subclause (i) of clause (j) of Section 3, the board, commission, foundation, agency, tribunal, association or other body of persons, or
  - (iii) in the case of an agreement executed by a local public body, the local public body,

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

(i) by regulations by the Governor in Council, where the contract is executed by the Province,

(ii) by the legal decision-making authority by which a board, commission, foundation, agency, tribunal, association or other body of persons, within the meaning of subclause (i) of clause (j) of Section 3, acts where the contract is executed by that board, commission, foundation, agency, tribunal, association or other body of persons, or

(iii) the legal decision-making authority by which a local public body acts where the contract is executed by that local public body,

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

**(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 Act restricts access to information provided by custom or practice prior to this Act coming into force. 1993, c. 5, s. 5; 1999 (2nd Sess.), c. 11, s. 5.

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

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

(a) making a request in writing to the public body 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 Section 11.

**(2)** The applicant may ask to examine the record or ask for a copy of the record. 1993, c. 5, s. 6.

**Duty of head of public body**

7 (1) Where a request is made pursuant to this Act for access to a record, the head of the public body to which the request is made shall

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

(b) either

(i) consider the request and give written notice to the applicant of the head's decision with respect to the request in accordance with subsection (2), or

(ii) transfer the request to another public body in accordance with Section 10.

(2) The head of the public body 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 6, 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 Act on which the refusal is based;

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

(c) where the record would contain information exempted pursuant to Section 15 if the record were in the custody or control of the public body, 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 public body who can answer the applicant's questions about the decision; and

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

(3) The head of a public body who fails to give a written response pursuant to subsection (2) is deemed to have given notice, on the last day of the period set out in that subsection, of a decision to refuse to give access to the record.

(4) The head of a public body may refuse to disclose to an applicant information

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

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

(5) The head of a public body shall notify an applicant of the publication or release of information that the head has refused to disclose pursuant to clause (b) of subsection (4).

(6) Where the information is not published or released within thirty days after the applicant's request is received, the head of the public body 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 pursuant to clause (b) of subsection (4). 1993, c. 5, s. 7; 1999 (2nd Sess.), c. 11, ss. 6, 23.

#### **Duties of head of public body where access given**

**8 (1)** Where an applicant is informed pursuant to subsection (2) of Section 7 that access will be given, the head of the public body concerned shall

(a) where the applicant has asked for a copy pursuant to subsection (2) of Section 6 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 pursuant to subsection (2) of Section 6 or where the record cannot reasonably be reproduced,

(i) permit the applicant to examine the record or part of the record, or

(ii) give the applicant access in accordance with the regulations.

(2) The head of a public body 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) The head of a public body 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 public body using its normal computer hardware and software and technical expertise; and

(b) creating the record would not unreasonably interfere with the operations of the public body. 1993, c. 5, s. 8.

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

9 (1) The head of a public body may extend the time provided for in Sections 7 or 23 for responding to a request for up to thirty days or, with the Review Officer's permission, for a longer period if

(a) the applicant does not give enough detail to enable the public body 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 public body; or

(c) more time is needed to consult with a third party or other public body before the head of the public body can decide whether or not to give the applicant access to a requested record.

(2) Where the time is extended pursuant to subsection (1), the head of the public body 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 the Review Officer. 1993, c. 5, s. 9; 1999 (2nd Sess.), c. 11, s. 23.

#### **Transfer of request**

10 (1) Within ten days after a request for access to a record is received by a public body, or such longer period as the Review Officer may determine, the head of the public body may transfer the request and, if necessary, the record to another public body if

(a) the record was produced by or for the other public body;



(b) the other public body was the first to obtain the record;  
or

(c) the record is in the custody or under the control of the other public body.

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

(a) the head of the public body who transferred the request shall notify the applicant of the transfer; and

(b) the head of the public body to which the request is transferred shall respond to the applicant in accordance with this Act not later than thirty days after the request is received by that public body unless this time limit is extended pursuant to Section 9. 1993, c. 5, s. 10; 1999 (2nd Sess.), c. 11, s. 7.

### Fees

**11 (1)** An applicant who makes a request pursuant to Section 6 shall pay to the public body the application fee prescribed by the regulations.

(2) The head of a public body may require an applicant who makes a request pursuant to Section 6 to pay to the public body 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 pursuant to subsection (2) to pay a fee for the first two hours spent locating and retrieving a record.

(4) Subsections (1) and (2) do not apply to a request for the applicant's own personal information.

(5) Where an applicant is required to pay fees for services pursuant to subsection (2), the head of the public body shall give the applicant an estimate of the total fee before providing the services.

(6) The head of a public body may require the applicant to pay the estimated fee prior to providing the services pursuant to subsection (2).

(7) On request of the applicant, the head of a public body may excuse an applicant from paying all or part of a fee referred to in subsection (2) if, in the head's opinion,

- (a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment; or

(b) the record relates to a matter of public interest, including the environment or public health or safety.

**(8)** The fees that applicants are required to pay for services pursuant to subsection (2) shall not exceed the actual costs of the services. 1993, c. 5, s. 11; 2002, c. 5, s. 18; 2007, c. 9, s. 8.

## EXEMPTIONS

### **Intergovernmental affairs**

**12 (1)** The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

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

- (i) the Government of Canada or a province of Canada,
- (ii) a municipal unit or school board,
- (iii) an aboriginal government,
- (iv) the government of a foreign state, or
- (v) an international organization of states;

(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 head of a public body shall not disclose information referred to in subsection (1) without the consent of the Governor in Council.

**(3)** Subsections (1) and (2) do not apply to information in a record that has been in existence for fifteen or more years. 1993, c. 5, s. 12; 1999 (2nd Sess.), c. 11, s. 8.

### **Deliberations of Executive Council**

**13 (1)** The head of a public body may refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees.

**(2)** Subsection (1) does not apply to

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

(b) information in a record of a decision made by the Executive Council or any of its committees on an appeal pursuant to an Act; or

(c) background information in a record the purpose of which is to present explanations or analysis to the Executive Council or any of its committees 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. 1993, c. 5, s. 13.

#### **Advice to public body or minister**

**14 (1)** The head of a public body may refuse to disclose to an applicant information that would reveal advice, recommendations or draft regulations developed by or for a public body or a minister.

**(2)** The head of a public body shall not refuse pursuant to subsection (1) to disclose background information used by the public body.

**(3)** Subsection (1) does not apply to information in a record that has been in existence for five or more years.

**(4)** Nothing in this Section requires the disclosure of information that the head of the public body may refuse to disclose pursuant to Section 13. 1993, c. 5, s. 14.

#### **Law enforcement**

**15 (1)** The head of a public body 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 the 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 head of a public body may refuse to disclose information to an applicant if the information

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

(b) is 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) is 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 head of the public body shall not refuse to disclose to an applicant pursuant to this Section 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). 1993, c. 5, s. 15.

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

**16** The head of a public body may refuse to disclose to an applicant information that is subject to solicitor-client privilege. 1993, c. 5, s. 16.

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

**17 (1)** The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the Government of Nova Scotia or the ability of the Government to manage the economy and, without restricting the generality of the foregoing, may refuse to disclose the following information:

(a) trade secrets of a public body or the Government of Nova Scotia;

(b) financial, commercial, scientific or technical information that belongs to a public body or to the Government of Nova Scotia and that has, or is reasonably likely to have, monetary value;

(c) plans that relate to the management of personnel or of the administration of a public body 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 a public body or the Government of Nova Scotia.

(2) The head of a public body shall not refuse to disclose pursuant to subsection (1) the results of product or environmental testing carried out by or for the public body, 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 public body; or

(b) for the purpose of developing methods of testing. 1993, c. 5, s. 17.

#### **Health and safety**

**18 (1)** The head of a public body 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 head of a public body 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. 1993, c. 5, s. 18.

#### **Conservation**

**19** The head of a public body 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. 1993, c. 5, s. 19.

**Closed meetings of local public bodies**

**19A** Where an enactment authorizes a meeting of the elected officials or the governing body of a local public body or a committee of the governing body of the local public body to be held in the absence of the public, the head of the local public body may refuse to disclose to an applicant any record that would reveal

(a) the draft of a resolution, by-law or other legal instrument by which the local public body acts or the draft of a local bill that has been considered at a meeting held in the absence of the public unless the draft or legal instrument requested by the applicant has been considered at a meeting open to the public or the record has been in existence for more than fifteen years; or

(b) the substance of deliberations at a meeting held in the absence of the public unless the subject matter of the deliberations has been considered at a meeting that is open to the public or the record has been in existence for more than fifteen years. 1999 (2nd Sess.), c. 11, s. 9.

**Academic research**

**19B (1)** *repealed 2012, c. 3, s. 21.*

**(2)** The head of a local public body may refuse to disclose details of the academic research being conducted by an employee of the local public body in the course of the employee's employment.

**(3)** Notwithstanding subsection (2), where possible, the head of a local public body shall disclose the title and amount of funding being received with respect to the academic research referred to in subsection (2). 1999 (2nd Sess.), c. 11, s. 9; 2012, c. 3, s. 21.

**Certain personal information**

**19C** The head of a university may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled solely for the purpose of

- (a) determining the applicant's suitability for
- (i) appointment, promotion or tenure as a member of the faculty of a university,
  - (ii) admission to an academic program, or
  - (iii) receipt of an honour or award;

or

- (b) evaluating the applicant's research projects and materials,

if the information is provided explicitly or implicitly in confidence. 1999 (2nd Sess.), c. 11, s. 9.

**Certain hospital records**

**19D (1)** The head of a local public body that is a hospital may refuse to disclose to an applicant a record of any report, statement, memorandum, recommendation, document or information that is used in the course of, or arising out of, any study, research or program carried on by or for the local public body or any committee of the local public body for the purpose of education or improvement in medical care or practice.

**(2)** Subsection (1) does not apply to medical and hospital records pertaining to a patient. 1999 (2nd Sess.), c. 11, s. 9.

**Labour conciliation records**

**19E** The head of a public body 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. 1999 (2nd Sess.), c. 11, s. 9.

## DISCLOSURE HARMFUL TO PERSONAL PRIVACY

**Personal information**

**20 (1)** The head of a public body 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 pursuant to subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Nova Scotia or a public body 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

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

(b) the personal information 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) the personal information relates to eligibility for income assistance or social-service benefits or to the determination of benefit levels;

(d) the personal information relates to employment or educational history;

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

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

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

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

(i) the personal information 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 Section 29 or 30;

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

(f) the disclosure reveals financial and other similar details of a contract to supply goods or services to a public body;

(g) the information is about expenses incurred by the third party while travelling at the expense of a public body;

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

(i) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body, not including personal information that is supplied in support of the request for the benefit or is referred to in clause (c) of subsection (3).

(5) On refusing, pursuant to this Section, to disclose personal information supplied in confidence about an applicant, the head of the public body 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.

(6) The head of the public body may allow the third party to prepare the summary of personal information pursuant to subsection (5). 1993, c. 5, s. 20.

### Confidential information

21 (1) The head of a public body shall 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 public body 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 head of a public body 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.

**(3)** The head of a public body shall disclose to an applicant a report prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an enactment.

**(4)** Subsections (1) and (2) do not apply if the third party consents to the disclosure. 1993, c. 5, s. 21.

### Notices

**22 (1)** On receiving a request for access to a record that the head of a public body has reason to believe contains information the disclosure of which must be refused pursuant to Section 20 or 21, the head of the public body 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 the 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 public body explaining why the information should not be disclosed.

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

(a) the head of the public body 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 head of the public body shall also give the applicant a notice stating

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

(c) *repealed 1999 (2nd Sess.), c. 11, s. 11.*

(3) For greater certainty, the time limited by subsection (2) of Section 7 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 9.

shall not (4) In complying with subsections (1) and (2), the public body

(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. 1993, c. 5, s. 22; 1999 (2nd Sess.), c. 11, s. 11.

### Decisions

**23** (1) Within thirty days after notice is given to an applicant pursuant to Section 22, the head of the public body 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.

(2) On reaching a decision pursuant to subsection (1), the head of the public body shall give written notice of the decision to

(a) the applicant; and

(b) the third party.

(3) Where the head of the public body decides to give access to the record or to part of the record, the notice shall state that the applicant will be given access unless the third party asks for a review pursuant to this Act within twenty days after the day notice is given pursuant to subsection (2).

(4) Notwithstanding anything contained in this Section, the head of a public body who has, pursuant to Section 22, 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. 1993, c. 5, s. 23; 1999 (2nd Sess.), c. 11, s. 12.

PROTECTION OF PERSONAL PRIVACY:  
COLLECTION, PROTECTION, RETENTION,  
USE AND DISCLOSURE OF PERSONAL INFORMATION

**Treatment of personal information**

**24** (1) Personal information shall not be collected by or for a public body 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 public body.

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

(3) The head of the public body shall protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.

(4) Where a public body uses an individual's personal information to make a decision that directly affects the individual, the public body 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. 1993, c. 5, s. 24.

**Correction of errors and omissions**

**25** (1) An applicant who believes there is an error or omission in the applicant's personal information may request the head of the public body that has the information in its custody or under its control to correct the information.

(2) Where no correction is made in response to a request pursuant to subsection (1), the head of the public body 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 head of the public body shall notify any other public body 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 pursuant to subsection (3) of a correction or annotation of personal information, a public body shall make the correction or annotation on any record of that information in its custody or under its control. 1993, c. 5, s. 25.

#### **Use of personal information**

**26** A public body 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, in the prescribed manner, to the use; or

(c) for a purpose for which that information may be disclosed to that public body pursuant to Sections 27 to 30. 1993, c. 5, s. 26.

#### **Disclosure of personal information**

**27** A public body may disclose personal information only

(a) in accordance with this Act or as provided pursuant to any other 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 public body or to a minister, if the information is necessary for the performance of the duties of, or for the protection of the health or safety of, the officer, employee or minister;

(g) to a public body to meet the necessary requirements of government operation;

(h) for the purpose of

- (i) collecting a debt or fine owing by an individual to Her Majesty in right of the Province or to a public body, or
- (ii) making a payment owing by Her Majesty in right of the Province or by a public body to an individual;
- (i) to the Auditor General or any other prescribed person or body for audit purposes;
- (j) to a member of the House of Assembly who has been requested by the individual, whom the information is about, to assist in resolving a problem;
- (k) 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;
- (l) to the Public Archives of Nova Scotia, or the archives of a public body, for archival purposes;
- (m) to a public body 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;
- (n) if the public body is a law-enforcement agency and the information is disclosed
  - (i) to another law-enforcement agency in Canada, or
  - (ii) to a law-enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority;
- (o) if the head of the public body determines that compelling circumstances exist that affect anyone's health or safety;
- (p) so that the next of kin or a friend of an injured, ill or deceased individual may be contacted; or
- (q) in accordance with Section 29 or 30. 1993, c. 5, s. 27.

**Use compatible for purpose information obtained**

**28** A use of personal information is a use compatible with the purpose for which the information was obtained within the meaning of Section 26 or 27 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 public body that uses the information or to which the information is disclosed. 1993, c. 5, s. 28.

**Disclosure for research purpose**

**29** A public body 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 head of the public body concerned 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 that public body; and

(d) the person to whom that information is disclosed has signed an agreement to comply with the approved conditions, this Act and any of the public body's policies and procedures relating to the confidentiality of personal information. 1993, c. 5, s. 29.

**Disclosure by Public Archives**

**30** The Public Archives of Nova Scotia, or the archives of a public body, may disclose personal information for archival or historical purposes where

(a) the disclosure would not be an unreasonable invasion of personal privacy pursuant to Section 20;

(b) the disclosure is for historical research and is in accordance with Section 29;

(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 Act. 1993, c. 5, s. 30.

**Disclosure in public interest**

**31 (1)** Whether or not a request for access is made, the head of a public body 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 head of a public body shall, if practicable, notify any third party to whom the information relates.

(3) Where it is not practicable to comply with subsection (2), the head of the public body shall mail a notice of disclosure in the prescribed form to the last known address of the third party.

(4) This Section applies notwithstanding any other provision of this Act. 1993, c. 5, s. 31.

#### REVIEW AND APPEAL

##### **Requests and appeals to court**

32 (1) A person who makes any request pursuant to this Act for access to a record or for correction of personal information may ask for a review of any decision, act or failure to act of the head of the public body that relates to the request.

(2) A third party notified pursuant to Section 22 of a request for access may ask for a review of any decision made about the request by the head of the public body.

(3) Notwithstanding subsection (1), a person who makes a request pursuant to this Act for access to a record or for correction of personal information may, within thirty days after the person is notified of the decision or the date of the act or failure to act, appeal directly to the Supreme Court pursuant to Section 41 if there is no third party notified pursuant to Section 22 or any third party so notified consents to that appeal.

(4) to (6) *repealed 2007, c. 9, s. 9.*

1993, c. 5, s. 32; 2002, c. 5, s. 19; 2007, c. 9, s. 9.

##### **Review officer**

33 (1) The Governor in Council shall appoint a person to serve full-time as Review Officer.

(2) A person appointed as Review Officer holds that office during good behaviour for a term of not less than five years or more than seven years but shall be removed by the Governor in Council on the passing by the House of Assembly of a resolution carried by a vote of a majority of the members of the House of Assembly voting thereon requiring the Governor in Council to do so.

(3) A person may be re-appointed as Review Officer.



(4) The Review Officer shall be paid out of the Consolidated Fund of the Province such salary as the Governor in Council determines.

(5) Such officers and employees as are necessary to enable the Review Officer to perform the duties of that office shall be appointed in accordance with the *Civil Service Act*.

(6) The Review Officer shall prepare annually an estimate of the sums required to be provided by the Legislature for the carrying out of this Act during the fiscal year, which estimate shall be transmitted to the Priorities and Planning Committee for its approval and shall be laid before the Legislature with the other estimates for the year.

(7) The Review Officer shall issue an annual report on the exercise of the functions of the Review Officer under this Act and shall lay the report before the House of Assembly. 1999 (2nd Sess.), c. 11, s. 14.

#### **Procedure for request for a review**

**34 (1)** To ask for a review pursuant to Section 32, a written request shall be filed with the Review Officer within

- (a) sixty days after the person asking for the review is notified of the decision;
- (b) sixty days after the date of the act or failure to act;
- (c) by a third party, twenty days after notice is given in the case of a review pursuant to subsection (2) of Section 23; or
- (d) a longer period allowed by the Review Officer.

(2) The failure of the head of the public body 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 in clause (a) of subsection (1) for filing a request for review does not apply.

(3) On receiving a request for a review, the Review Officer shall forthwith give a copy to

- (a) the head of the public body concerned; and
- (b) any other person that the Review Officer considers appropriate. 1993, c. 5, s. 34; 1999 (2nd Sess.), c. 11, s. 23.

#### **Settlement through mediation**

**35** The Review Officer may try to settle a matter under review through mediation. 1993, c. 5, s. 35; 1999 (2nd Sess.), c. 11, s. 23.

**Where failure to settle**

**36** Where the Review Officer is unable to settle a matter within thirty days through mediation, the Review Officer shall conduct a review in accordance with Section 37. 1993, c. 5, s. 36; 1999 (2nd Sess.), c. 11, s. 23.

**Reviews**

**37 (1)** The Review Officer may conduct a review in private.

**(2)** The following persons are entitled to make representations to the 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 Act;
- (c) the head of the public body 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 head of a public body, 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 39,
  - (ii) appeal the decision of the head pursuant to Section 41, and
  - (iii) written notice of an appeal under subsection (2) of Section 41; and
- (b) is a party to the appeal to which the notice of appeal referred to in subclause (iii) of clause (a) relates.

**(3)** The 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. 1993, c. 5, s. 37; 1999 (2nd Sess.), c. 11, ss. 15, 23.

**Duties and powers of Review Officer**

**38 (1)** Notwithstanding any other Act or any privilege that is available at law, the Review Officer may, in a review,

(a) require to be produced and examine any record that is in the custody or under the control of the public body named in the request made pursuant to subsection (1) of Section 6; and

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

**(2)** A public body 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 public body 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 public body 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. 1993, c. 5, s. 38; 1999 (2nd Sess.), c. 11, ss. 16, 23.

**Duties and powers on completing review**

**39 (1)** On completing a review, the 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 head of the public body and

(i) where the matter was referred to the Review Officer by an applicant, to the applicant and to any third party notified pursuant to this Act, or

(ii) where the matter was referred to the Review Officer by 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. 1993, c. 5, s. 39; 1999 (2nd Sess.), c. 11, s. 23.

**Duties of head on receipt of report**

**40 (1)** Within thirty days after receiving a report of the Review Officer pursuant to subsection (1) of Section 39, the head of the public body shall

(a) make a decision to follow the recommendation of the Review Officer or any other decision that the head of the public body 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 head of the public body does not follow the recommendation of the Review Officer, the head of the public body shall, in writing, inform the persons who were sent a copy of the report of the right to appeal the decision pursuant to clause (a) to the Supreme Court within thirty days of making the decision.

**(3)** Where the head of the public body does not give notice within the time required by subsection (1), the head of the public body is deemed to have refused to follow the recommendation of the Review Officer. 1993, c. 5, s. 40; 1999 (2nd Sess.), c. 11, s. 23.

**Appeal to Supreme Court**

**41 (1)** Within thirty days after receiving a decision of the head of a public body pursuant to Section 40, an applicant or a third party may appeal that decision to the Supreme Court in such form and manner as may be prescribed by the Nova Scotia *Civil Procedure Rules* or by the regulations.

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

**(1B)** Where a notice of appeal is given pursuant to subsection (1A), the Minister 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 is a party to the appeal.

**(2)** The head of a public body 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 head of the public body

(a) has notified pursuant to this Act; or

(b) would have notified pursuant to this Act if the head of the public body had intended to give access to the record or part of the record.

(3) The head of a public body 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) A third party who has been given notice of an appeal pursuant to subsection (2) or an applicant who has been given notice of an appeal pursuant to subsection (3) may appear as a party to the appeal.

(5) The Review Officer shall not be a party to an appeal.

(6) Where the head of a public body 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 head 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 head shall not give access until either the decision of the head is upheld by an order of the Supreme Court and the order becomes final by lapse of time or the decision of the head is upheld by the highest authority to which any further appeal or appeals are taken. 1993, c. 5, s. 41; 1999 (2nd Sess.), c. 11, ss. 17, 23.

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

42 (1) On an appeal, the Supreme Court 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 Act.

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

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

(a) any information or other material if the nature of the information or material could justify a refusal by a head of the public body to give access to a record or part of a record; or

(b) any information as to whether a record exists if the head of the public body, in refusing to give access, does not indicate whether the record exists.

(4) The Supreme Court may disclose to the Minister 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 public body.

(5) Where the head of the public body has refused to give access to a record or part of it, the Supreme Court, if it determines that the head of the public body is not authorized to refuse to give access to the record or part of it, shall

(a) order the head of the public body to give the applicant access to the record or part of it, subject to any conditions that the Supreme Court considers appropriate; or

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

(6) Where the Supreme Court finds that a record falls within an exemption, the Supreme Court shall not order the head of the public body to give the applicant access to the record, regardless of whether the exemption requires or merely authorizes the head of the public body to refuse to give access to the record.  
1993, c. 5, s. 42.

## GENERAL

### Exercise of right or power

**43** Any right or power conferred on an individual by this Act may be exercised

(a) where the individual is deceased, by the individual's personal 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 head of a public body, 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. 1993, c. 5, s. 43.

**Delegation of powers by head of public body**

**44 (1)** The head of a public body may delegate to one or more officers of the public body a power granted to the head of the public body or a duty vested in the head of the public body.

**(2)** A delegation pursuant to subsection (1)

(a) shall be in writing; and

(b) may contain any limitations, restrictions, conditions or requirements that the head of the public body considers necessary or advisable. 1993, c. 5, s. 44.

**Burden of proof**

**45 (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 head of a public body 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 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. 1993, c. 5, s. 45.

**Limitation of liability**

**46 (1)** No action or other proceeding lies against the head of a public body or any person acting on behalf of or under the direction of the head of the public body for damages resulting from

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

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

**(2)** Subsection (1) does not absolve Her Majesty in right of the Province or a public body from vicarious liability for an act or omission for which it would be vicariously liable if this Section were not in force. 1993, c. 5, s. 46.

**Offence and penalty**

**47 (1)** Every person who maliciously collects or discloses personal information in contravention of this Act or the regulations 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.

**(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 Act. 1993, c. 5, s. 47; 1999 (2nd Sess.), c. 11, s. 18.

**Directory respecting records of public bodies**

**48 (1)** The Minister shall publish a directory to assist in identifying and locating records of public bodies.

**(2)** The directory shall include

(a) a description of the mandate and functions of each public body and its components;

(b) a description and list of the records in the custody or under the control of each public body;

(c) a subject index; and

(d) the name, title, business address and business telephone number of the head of the public body.

**(3)** The directory shall include for each personal-information bank maintained by a public body

(a) its title and location;

(b) a description of the kind of personal information and the categories of individuals whose personal information is included;

(c) the authority for collecting the personal information;

(d) the purposes for which the personal information was obtained or compiled and the purposes for which it is used or disclosed;

(e) the categories of persons who use the personal information or to whom it is disclosed.

**(4)** Where personal information is used or disclosed by a public body for a purpose that is not included in the directory published pursuant to subsection (1), the head of the public body shall



- (a) keep a record of the purpose and either attach or link the record to the personal information;
- (b) promptly notify the Minister of the purpose; and
- (c) ensure that the purpose is included in the next publication of the directory.

**(5)** The Minister shall

- (a) provide copies of the directory to public bodies and to public libraries and other prescribed libraries in the Province; and
- (b) publish and distribute, at intervals of two years or less, supplements or replacements to keep the directory up to date.

**(6)** The head of a public body shall ensure that copies provided pursuant to subsection (5) are available to the public at an office of the public body.

**(7)** This Section applies to such public bodies as are prescribed by the regulations. 1993, c. 5, s. 48.

**Regulations**

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

- (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 Act;
- (c) prescribing additional circumstances in which a head of the public body may waive the payment of all or any part of a prescribed fee;
- (d) prescribing, for the purpose of Section 19, 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) designating
  - (i) any agency, association, board, commission, corporation, office, society or other body
    - (A) any member of which is appointed by the Governor in Council or a minister,
    - (B) a controlling interest in the share capital of which is owned by Her Majesty in right of the Province or any of its agencies, or

(C) that performs functions pursuant to an enactment,

(ii) to (iv) *repealed 1999 (2nd Sess.), c. 11, s. 18.*

as a public body;

(g) designating a person as the head of a public body;

(h) modifying any provision of this Act in respect of a public body or class of public bodies designated pursuant to clause (f);

(i) prescribing the form and manner of a review pursuant to this Act;

(j) prescribing the form and manner of an appeal pursuant to this Act;

(k) prescribing any matter that is to be included in a notice that is required by this Act;

(ka) amending the Schedule to this Act to the extent permitted by subsection (1) of Section 3A;

(kb) amending subsection (2) of Section 4A to the extent permitted by subsection (3) of that Section;

(kc) designating an executed contract as a public-private partnership or a class of executed contracts as a class of public-private partnerships for the purpose of subsection (2A) of Section 5;

(kd) providing that clause (b) of subsection (1A) of Section 22 applies;

(ke) prescribing time limits for the purpose of subsection (2) of Section 38;

(l) prescribing forms for the purpose of this Act;

(m) prescribing any other matter or thing required or authorized by this Act to be prescribed in the regulations;

(n) for any purpose contemplated by this Act;

(o) defining any word or expression used but not defined in this Act;

(p) enlarging or restricting the meaning of any word or expression defined in this Act;

(q) to carry out effectively the intent and purpose of this Act.

(2) No designation shall be made pursuant to clause (f) of subsection (1) until after the submission of the report pursuant to Section 50 unless requested by the body being designated.

(3) Clause (f) of subsection (1) and subsection (2) do not restrict the meaning of public body as contained in subclause (i) of clause (j) of Section 3.

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

(5) The exercise by the Governor in Council of the authority contained in this Section shall be regulations within the meaning of the *Regulations Act*. 1993, c. 5, s. 49; 1999 (2nd Sess.), c. 11, s. 19.

#### **Duty to designate head**

**49A** A local public body shall, by by-law or other legal instrument by which the local public body acts, designate a person or group of persons as the head of the local public body for the purpose of this Act. 1999 (2nd Sess.), c. 11, s. 20.

#### **Review of Act**

**50** Before the expiration of three years after this Section comes into force, the Minister shall appoint an advisory committee which shall begin a comprehensive review of this Act within one year after its appointment and shall submit to the Governor in Council a report that includes any amendments recommended by the committee and any designations pursuant to clause (f) of subsection (1) of Section 49 recommended by the committee. 1999 (2nd Sess.), c. 11, s. 21.

#### **Repeal**

**51** Chapter 11 of the Acts of 1990, the *Freedom of Information Act*, is repealed. 1993, c. 5, s. 51.

#### **Effective date**

**52** This Act comes into force on and not before the first day of July, 1994, or such earlier day as the Governor in Council orders and declares by proclamation. 1993, c. 5, s. 52.

No proclamation  
In force - July 1, 1994

### **SCHEDULE**

#### **Agriculture and Marketing**

Apple Maggot Control Board  
Artificial Insemination Advisory Board  
Crop and Livestock Arbitration Board  
Crop Development Institute  
Dairy Industry Advisory Committee  
Deer Farming Advisory Committee  
Farm Machinery Advisory Committee  
Farm Management Institute  
Farm Registration Advisory Committee

Farm Registration Appeal Committee  
Farm Skills Advisory Committee  
Fur Institute  
a livestock health services board established pursuant to the *Livestock Health Services Act*  
Marshland Reclamation Commission  
Meat Inspection Board  
Natural Products Marketing Council  
Nova Scotia Beef Commission  
Nova Scotia Crop and Livestock Insurance Commission  
Nova Scotia Dairy Commission  
Nova Scotia Farm Loan Board  
Nova Scotia Grain and Forage Commission  
Soil Institute  
Weed Control Advisory Committee  
Wild Blueberry Institute

**Business and Consumer Services**

Board of Embalmers and Funeral Directors  
Nova Scotia Credit Union Deposit Insurance Corporation  
Public Accountants Board of the Province of Nova Scotia

**Community Services**

an agency within the meaning of the *Children and Family Services Act*

**Economic Development**

Bedford Waterfront Development Corporation Limited  
Business Development Corporation  
InNOVACorp.  
Nova Scotia Film Development Corporation  
Nova Scotia Voluntary Planning Board  
Trade Centre Limited  
Trade Council of Nova Scotia  
Waterfront Development Corporation Limited

**Education**

Johnstone (Dr. P. Anthony) Memorial Fund Entrance Scholarship  
a university foundation established by the *University Foundations Act*  
Youth Advisory Council

**Environment**

Nova Scotia Youth Secretariat  
On-site Services Advisory Board  
Radiation Health Advisory Board

**Finance**

Halifax-Dartmouth Bridge Commission  
Nova Scotia Gaming Corporation  
Nova Scotia Power Finance Corporation  
Teachers Pension Board

**Fisheries and Aquaculture**

Nova Scotia Fisheries and Aquaculture Loan Board

**Health**

Advisory Commission on AIDS  
Board of Dispensing Opticians  
Cape Breton Health Care Complex  
Denturist Licensing Board  
Facilities Review Board under the *Hospitals Act*  
Health Services and Insurance Commission  
Minister's Substance Abuse Advisory Board  
Nova Scotia Health Council  
Seniors' Pharmacare Program Board of Directors

**Housing and Municipal Affairs**

a housing authority created under the *Housing Act*  
Housing Development Corporation  
Municipal Finance Corporation

**Human Resources**

Civil Service Employee Relations Board  
Long-Term Disability Trust Fund Board  
Public Sector Compensation Restraint Board

**Justice**

Nova Scotia Legal Aid Commission

**Labour**

Board of Examiners appointed pursuant to the *Stationary Engineers Act*  
Board of Examiners for the Certification of Blasters  
Board of Examiners of Mining Examinations  
Construction Industry Panel of the Labour Relations Board (Nova Scotia)  
Fire Prevention Advisory Council  
LP Gas Board of Examiners  
Labour Relations Board  
Labour Standards Tribunal (Nova Scotia)  
an appeal panel designated pursuant to the *Occupational Health and Safety Act*  
Occupational Health and Safety Advisory Council  
Pay Equity Commission

**Natural Resources**

Board of Examiners appointed pursuant to the *Scalers Act*  
Natural Resources Advisory Council  
Primary Forest Products Marketing Board  
Species-at-Risk Working Group

**Premier's Office**

Election Commission

**Tourism and Culture**

Gaelic College Foundation  
N.S. International Tattoo Society  
Nova Scotia Arts Council  
Peggy's Cove Commission  
Schooner Bluenose Corporation  
Shubenacadie Canal Commission  
Upper Clements Theme Park Board

**Transportation and Public Works**

Halifax-Dartmouth Port Development Commission  
Sydney Environmental Resources Limited  
Sydney Harbour Port Regional Development Commission

1999 (2nd Sess.), c. 11, s. 22; N.S. Reg. 205/2009, s. 2; 2011, c. 67, s. 11.

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