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ACCESS TO INFORMATION ACT

Whereas the public should have a right of reasonable access to information relating to the business of government subject only to specific and limited exceptions necessary for the effective operation of government in the public interest;

Therefore, the Commissioner of the Northwest Territories, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Interpretation

1. In this Act,

"applicant" means a person who applies for access to a record under this Act;

"government body" means,

- (a) any department, division, board, commission or unit of the Government of the Northwest Territories;
- (b) the Management and Services Board of the Legislative Assembly and the Office of the Clerk of the Legislative Assembly;
- (c) any corporation, board, foundation or other similar agency that is an agent of the Government of the Northwest Territories; and
- (d) any corporation, board, foundation or other similar body, whether incorporated or unincorporated, whose members or directors are solely appointed pursuant to an Act of the Commissioner-in-Council or by an order of the Commissioner or a member of the Executive Council;

"information" means information in any form including information that is written, photographed, recorded, stored as a machine readable record or electronic data, or otherwise stored in any manner regardless of its physical form or characteristics;

"record" means the form in which information is kept.

Act complementary

2. This Act is intended to complement and not replace existing procedures for access to government information and is not intended to limit in any way access to the type of government information that is normally available to the general public.

Other access rights preserved 3.(1) Nothing in this Act shall be interpreted to restrict or extinguish,

(a) any custom or practice; or

(b) any right or privilege, whether created by or under another Act;

whereby any person, including an elected official or a public officer acting in the course of duty, is authorized to gain access to any information in the custody or under the control of a government body.

Access under other Act (2) Without restricting the generality of subsection (1), nothing in this Act or the regulations affects any procedure established by or under any other Act for gaining access to any record referred to therein.

Access 4. Subject to this Act, every person shall have access to information contained in any record in the custody or under the control of a government body.

Informal request 5. A person desiring to obtain information from a government body shall first make a request to the office of the appropriate government body.

Request 6.(1) Where a person is denied access to information requested from a government body, that person may make a formal request for the information to the Minister responsible for the government body or the official exercising the chief executive officer function for the particular government body.

Contents of application (2) The application shall,  
(a) be in writing;  
(b) be delivered, mailed or sent by facsimile transmission to the office of the Minister responsible or the appropriate official;  
(c) contain a description of the efforts made to obtain the information requested;  
(d) contain a description of the record or the subject-matter of the information requested with sufficient detail to enable a person familiar with the subject matter to identify the record.

Where record not identified

(3) Where the record containing the requested information cannot be identified, the Minister shall advise the applicant that the record cannot be identified and request the applicant to give more details that might help to identify the record.

Where record not located

(4) Where the record containing the requested information can be identified but the record cannot be located, the Minister shall advise the applicant of the steps that are being taken to locate the record.

Where record destroyed

(5) Where the record that contained the information no longer exists the Minister shall advise the applicant that the record no longer exists and, if possible, when it was destroyed.

Where wrong government body

(6) Where a request for information identifies the wrong government body, the Minister shall advise the applicant of the name of the correct government body to which the applicant may direct the request.

Request granted or denied

7.(1) The Minister shall grant or deny a request for information within 30 days after the day on which the request is received by the Minister.

Deemed denial

(2) A request for information that is not granted within 30 days of the day on which the request is received, or within the extended time allowed under subsection (3), shall be deemed to have been denied and reasons for denial shall be provided by the Minister.

Extension of deadline

(3) Where a the record containing the requested information cannot be identified and the applicant has been asked to give more details to help identify the relevant record, the Minister shall grant or deny the request within 30 days after additional details are given to enable the record to be identified.

Grant of request

8. Where a request for information is granted, and the prescribed fee is paid, the information shall be made available to the applicant within the period set out in sub-section 7(1) or sub-section 7(3) as the case may be.

Language

9. Notwithstanding any other enactment, the information shall be provided in the language in which the record is kept by the government body.

Exceptions

10.(1) No record shall be disclosed where access to it or its release,

(a) would disclose information the confidentiality of which is protected by law;

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- (b) would reveal information concerning a person's identity, residence, dependants, marital status, employment status, employment record, financial transactions, income, assets and liabilities, credit worthiness, education, character, reputation, health, physical or personal characteristics, mode of living, or criminal record;
- (c) would violate the confidentiality of information that was given by another government;
- (d) would likely cause a financial loss to or gain for a person or government body or affect the competitive position of a person or government body;
- (e) would affect negotiations in relation to an existing or proposed agreement or contract;
- (f) would disclose the substance of proposed bills or regulations;
- (g) would disclose the existence or content of opinions or recommendations communicated to, between, or from members of the Executive Council on matters relating to the formulation of government policy and the making of government decisions;
- (h) would disclose any agenda for or record of the deliberations of the Executive Council;
- (i) would disclose the content of committee or caucus meetings, research papers, briefing notes or other communications directed to the members of the Legislative Assembly that, by the practices and privileges of the Legislative Assembly, are consistently treated as confidential;
- (j) would disclose legal opinions or advice given to a person or government body, or privileged communications as between lawyer and client in a matter of government business;
- (k) would disclose information relating to the conduct of investigations in the enforcement of any law of Canada or of the Northwest Territories, the administration of justice, or the proper custody, control or supervision of persons under sentence;

(1) would violate any right respecting intellectual property, including any copyright, patent right or trademark right;

(m) would hamper an audit in progress or reveal an auditing program or auditing operation plan; or

(n) would prejudice the outcome of judicial proceedings.

Access to personal information

(2) Paragraph 1(b) does not apply to requests made by an applicant for information relating to the applicant only, or requests relating to another person where that other person has consented in writing to access being given.

Access denied

(3) Notwithstanding subsection (2), access may be denied where there are reasonable grounds to believe that disclosure of the record might result in,

(a) physical or serious psychological harm to the applicant or, in the case of a record which discloses information about a third party, to the third party; or

(b) physical harm to any person.

Exception respecting decisions of Executive Council

(4) Paragraphs (1)(h) and (i) do not apply in respect of a record that contains only an account of a decision that is made in the exercise of the powers or functions of the Executive Council.

Executive Council may release

(5) Records of the Executive Council that would otherwise be excepted from the operation of this Act may be released upon the authorization of the Executive Council.

Third Party Information

11.(1) Subject to sub-section (2) to (4), no person shall disclose a record that contains,

(a) trade secrets of a third party;

(b) financial, commercial, scientific or technical information that is confidential information supplied to a government body by a third party and is treated consistently in a confidential manner by the third party;

(c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or

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(d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

Disclosure

(2) - A record that contains information described in subsection (1) may be disclosed with the consent of the third party to whom the information related.

Public health and safety

(3) A Minister may disclose any record requested under this Act, or any part thereof, that contains information described in paragraph (1)(b), (c) or (d), if such disclosure would be in the public interest as it relates to public health, public safety or protection of the environment and if such public interest in disclosure clearly outweighs in importance any financial loss or gain to, prejudice to the competitive position of, or interference with contractual or other negotiations of a third party.

(4) Where a Minister intends to release any information described in this section, he or she shall give not less than 30 days notice in writing to the third party affected who may appeal such decision in accordance with the procedure set out in section 16.

Exceptions for portions of records

12.(1) Where a record contains some information that cannot be disclosed, that portion of the record shall not be disclosed and the remainder shall be disclosed.

Disclosure of portion

(2) Where it is not practical to separate the portion of the record that can be disclosed from the portion that cannot be disclosed, the portion that can be disclosed shall, if the prescribed fee is paid, be transcribed into a form that can be disclosed to the applicant.

Act does not apply to certain materials

13.(1) This Act does not apply to,

- (a) published material or material available for purchase by the public;
- (b) library or museum material made or acquired and preserved solely for public reference or exhibition purposes; and
- (c) material placed in the Public Archives of the Northwest Territories and available to the public.

Refusal of access where material to be published

(2) The Minister responsible for the government body named in an application under this Act may refuse to disclose any record or any part thereof if the material in the record or part thereof will be published for public use within 90 days after the request is made.

Information filed  
by applicant

14.(1) An applicant given access to a record that discloses information about himself or herself may submit to the government body that has custody or control of the record,

- (a) a written objection respecting any error or omission of fact that the applicant alleges is contained in the record; and
- (b) a written objection to, or explanation or interpretation of, any opinion that has been expressed by a third party about the applicant and is contained in the record.

Information becomes  
part of record

(2) As of the date of its receipt an objection, explanation or interpretation submitted under subsection (1) becomes part of the record and shall not be destroyed, altered or removed from the record.

Denial

15. Where a request for information is denied the Minister shall give to the applicant written reasons for the denial and a written description of the right to appeal the denial and the procedure for appealing.

Appeal to Supreme  
Court judge

16.(1) Where the request for information is denied, the applicant or, in the case of an appeal under sub-section 11(4), the third party affected may appeal by filing an appeal with a judge of the Supreme Court.

Summary disposition

(2) The Supreme Court judge may receive evidence by affidavit or in any other manner considered appropriate by the judge and may decide the appeal in a summary manner.

Judge to review  
material

(3) On an appeal the Supreme Court judge may require the production of and may inspect the information that is the subject of the appeal, if the information exists, but that inspection shall be conducted without the presence of any person and the confidentiality of the information shall be preserved pending the judge's decision as to whether the applicant has a right to it.

Production of records

(4) Notwithstanding any other Act or any privilege under the law of evidence, the Supreme Court judge may, for purposes of disposing of any appeal under this Act, order production of any record in the custody or under the control of a government body for examination by the court.

- Procedures to avoid disclosure (5) In disposing of an appeal under this Act, the Supreme Court judge shall take every reasonable precaution, including where appropriate, conducting hearings in camera, to avoid disclosure of any excepted information.
- Return of documents (6) All records or other information produced for use by the Supreme Court judge shall be returned to the government body responsible therefor within thirty (30) days of the disposition of the appeal.
- Time for appeal 17.(1) An appeal pursuant to section 16 shall be filed within 30 days of receiving notice of the decision to deny access or the notice required under section 11(4).
- Extension of time (2) Prior to, or after, the expiry of the 30 day period referred to in subsection (1), and where special circumstances warrant, the court may extend the time for filing an appeal.
- Burden of proof 18. In any appeal under this Act, the burden of proof is on the party seeking to establish that the applicant has no right of access to the information requested.
- Order of judge 19.(1) Upon hearing an appeal, the Supreme Court judge may,  
(a) order that the request for some or all of the requested information be granted;  
(b) order that the denial of the request be upheld in relation to some or all of the information, or  
(c) make any order in consequence of, or to implement, an order under paragraphs (a) and (b) that seems necessary and just in the circumstances.
- Denial of appeal (2) If, under sections 10 or 11, there is no right to the requested information the Supreme Court judge shall deny the request.
- No further appeal 20. A decision of the Supreme Court judge under section 19 is final and binding and there is no appeal therefrom.
- Delegation by Minister 21. The Minister or the official exercising the chief executive officer function for each government body may designate an official within that body to carry out the functions required by this Act.
- Annual Report 22. The Minister responsible for the administration of this Act shall submit to the Legislative Assembly an annual report on the administration of this Act during each financial year.



Protection

23. No action lies against any member of the Executive Council, the Commissioner or the Government of the Northwest Territories or any government body, or any person acting on behalf of any of them, for the disclosure in good faith of any record or any part of a record pursuant to this Act or for any consequences that flow from such disclosure.

Regulations

24. The Commissioner may make regulations,

- (a) prescribing fees or a manner for determining fees for the purposes of this Act;
- (b) without requiring the use of any particular form, prescribing forms that may be used under this Act;
- (c) prescribing such procedures as are not established by the Act as may be necessary to carry out the purposes of the Act.