

ACCESSING GOVERNMENT INFORMATION IN

New Brunswick

RESOURCES

Right to Information Act

<http://www.gnb.ca/acts/acts/r-10-3.htm>

Office of the Ombudsman

<http://www.gnb.ca/0073/index-e.asp>

Government guide

<http://www.gnb.ca/0012/information/index-e.asp>

Disclaimer:

We have attempted to ensure that the information provided in this Manual is reasonably accurate and complete as of December 2005. However, we cannot guarantee complete accuracy or comprehensiveness; you should consult the relevant legislation and authorities if you seek fully accurate, complete, and up-to-date information.

Moreover, this Manual provides information of a general nature and does not constitute legal advice. Should you need legal advice, seek a lawyer.

Please report any errors or omissions in this Manual to cippic@uottawa.ca

WHO CAN REQUEST GOVERNMENT INFORMATION?

Anyone can request government information.

WHAT INFORMATION CAN I ACCESS?

You have the right to access any record under the control of, or relating to, a government department, subject to certain exceptions described below. Government departments include the New Brunswick government, educational bodies and health care bodies. They do not include municipalities or the Human Rights Commission. A complete list of government departments to which the right to information law applies can be found in Schedule A of the regulations. See: <http://www.gnb.ca/0062/regs/85-68.htm>.

When only part of a record is subject to an exception, the government department must, if possible, delete that portion and release the rest of the record.

WHAT ARE THE EXCEPTIONS TO MY RIGHT OF ACCESS?

There are a number of circumstances in which you may be denied access to information, including the following:

Publicly available information

Your request may be denied if the information is already publicly available.

Another Act prevails

If the information you want is governed by an Act that specifies that the *Right to Information Act* does not apply, you may be denied access to it.

Law enforcement and legal proceedings

Your access request may be refused if disclosure could be harmful to law enforcement. This includes information that would: reveal investigative techniques or details of an investigation; reveal confidential sources of information; threaten the security of certain buildings, structures or systems (including computer systems); deny someone a fair trial; or jeopardize the proper control and supervision of prison inmates.

Privileged information

Your request for information may be denied if the information is protected by legal privilege such as solicitor-client privilege.

Advice

You may be refused access to information if disclosure would reveal the substance of proposed legislation or if it would reveal advice or recommendations intended for Cabinet or a Minister's office.

Relations with other governments

Your request for access may be denied if disclosure would harm relations between New Brunswick and other governments, including local, Canadian and foreign governments. It may also be refused if the information was provided in confidence by another government.

Economic and other interests of a public body

Your access to information request may be refused if disclosure could cause a financial loss or gain to a government department.

Business and financial interests of third parties

Your request for access may be denied if disclosure would reveal the confidential financial, commercial, technical or scientific information of individuals or businesses or would cause a financial loss or gain to a third party.

Third party privacy

Your access request may be denied if disclosure would reveal personal information about a third party. Usually, however, personal information can be removed from records and the rest of the record will be provided to you.

Archived records

You do not have a right of access to records placed in the custody of the Archives. Generally, such records are accessible to the public, but there are exceptions and these are listed in the *New Brunswick Archives Act*. See:

<http://www.canlii.org/nb/laws/sta/a-11.1/20050420/whole.html>.

Individual safety

Your access request may be denied if disclosure could threaten someone's safety.

Exceptions related to personal information

For exceptions more relevant to personal information, see *Accessing Personal Information in New Brunswick*.

HOW DO I MAKE A REQUEST?

1. Contact government departments

Call the government department and ask whether it is willing to provide access to the information you want. Such informal methods can be effective, especially when the information you are requesting may be refused under one of the grounds above. Note, however, that informal access to information requests do not trigger time limits for responding to you, nor do they trigger certain rights, such as the right to complain to the Ombudsman.

2. Determine whether the department is subject to access to information law

All departments subject to the Act are listed in a Schedule to the Regulation under the Act. See: <http://www.gnb.ca/0062/PDF-regs/85-68.pdf>.

3. Frame your request carefully

a) Request indexes, catalogues, and other records-management aids

If you are seeking information that spans a broad area or could involve many records, you should first consider requesting indexes, file lists, file plans, and other records-management aids. These records of records can help you narrow your request and choose only the most relevant materials. This process can also shed light on other issues you may not have been aware of. The only drawback is that this is a two step request process: once you decide which records you would like, you must file another request to which the public body will have 30 days to respond.

As an example, one research team phrased its request as follows:

Records Management: We request all records related to the handling of records by the Smart Card Project. These include, but are not limited to: policies; standards; and procedures and practices concerning the collection, cataloguing, organization, access, security, retention, disposal, status, and audit trails pertinent to the project ... We also request any indices, catalogues, finding aids, databases, meta-data, and the like intended to facilitate management of, and access to, the records and documents relevant to the Smart Card Project.

b) Be specific

Unless you absolutely need it, try not to request everything available on a subject so as to ensure a faster and less costly response. In addition, the more specific your request is, the less likely the public body will request a time limit extension on the grounds that answering the request within 30 days would unreasonably interfere with its operations.

4. If you need help

If you need help, ask the relevant government department. It is required to help you with your request.

DO I HAVE TO USE A FORM?

No. To request access, simply send a letter to the appropriate government department.

WHAT WILL IT COST?

There is a \$5 fee for making an access request. In addition, you may be charged a fee of 10 cents per page for photocopying.

HOW LONG WILL IT TAKE?

The government department must make every reasonable effort to respond to your request within 30 days of receiving it. If your request is transferred to another public body, you must be notified and the new body must respond to you within 30 days of receiving your request.

A failure to respond within 30 days to a request is deemed a refusal and can be appealed.

WHAT ARE MY OPTIONS REGARDING FORMAT?

Copies v. originals

You may have copies sent to you or you may view the originals. A government department may impose one format (copy or original) depending on considerations of length, condition, and form.

Language

Records are provided in their original language. A government department is not required to provide government records in the official language of your choice. Concerns in this regard should be directed to the Commissioner of Official Languages:

<http://www.officiallanguages.nb.ca/>.

Alternative formats

A government department is not required to provide records in alternative formats for the hearing or seeing impaired. It will nevertheless often try to accommodate such requests. Concerns regarding the lack of such formats should be addressed to the Human Rights Commission: <http://www.gnb.ca/hrc-cdp/e/>.

WHAT CAN I DO IF MY REQUEST FOR ACCESS IS DENIED?

If you are not satisfied with a government department's response to your access request, you have the right to request a review of its decision by the Office of the Ombudsman. The Ombudsman may make recommendations, and these are not binding on government departments.

Alternately, you may request that a judge of the Court of Queen's Bench review a decision to refuse access to information. A judge's decision is binding on a government department but going to court may take more time and cost more money than a review by the Ombudsman.

You may not request reviews by the court and the Ombudsman simultaneously. If you first approach the Ombudsman, and he or she recommends disclosure but that recommendation is rejected by the government department, you may apply to a judge for review. If you choose to go to court without first requesting a review by the Ombudsman, you may not request a review by the Ombudsman after a judge has issued his or her decision.

For more information, see *Appealing Access to Information Decisions in New Brunswick*.