

## ACCESSING GOVERNMENT INFORMATION IN

# Newfoundland & Labrador

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### RESOURCES

**Access to Information and Protection of Privacy Act**

<http://www.hoa.gov.nl.ca/hoa/statutes/a01-1.htm>

**Link to Office of the Information and Privacy Commissioner of Newfoundland & Labrador**

<http://www.oipc.gov.nl.ca/>

**Link to guide**

<http://www.justice.gov.nl.ca/just/civil/atipp/>

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**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](mailto:cippic@uottawa.ca)*

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## **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 a public body, subject to certain exceptions described below. Public bodies include the Newfoundland government, municipalities, educational bodies and health care bodies.

## **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***

You may be denied access to information that is already available to the public. This includes information for which you must pay a fee and information that will be made available to the public within 45 days of the date when the request is received.

If your request is refused because the information will be available within 45 days, the public body must inform you when it becomes available. If it is still not published after 45 days, the public body can not deny you access on this ground.

### ***Repetitive or incomprehensible request***

Your request can be disregarded if it is repetitive or incomprehensible or if it is for information that has already been provided to you.

### ***Another Act prevails***

If access to the information you want is prohibited or restricted by another act or regulation, you may not be able to access it.

### ***Law enforcement and legal proceedings***

Your access request may be denied if disclosure could be harmful to law enforcement. This includes information that would: jeopardize national security; reveal investigative techniques or details of an investigation; reveal confidential sources of information; endanger anyone; deny someone a fair trial or otherwise harm legal proceedings; expose its source to civil liability; or facilitate the escape of an inmate. Furthermore, the public body

may refuse to confirm or deny the existence of such information.

The following law enforcement information may, however, be disclosed:

- reports of routine inspections;
- statistics relating to the success rate of law enforcement; and
- statistics relating to decisions to prosecute.

### **Court records**

You cannot access court records under the *Access to Information and Protection of Privacy Act*. This includes the records of: courts, judicial administration or judicial support services, judges, magistrates, or justices of the peace. Similarly, the personal notes of judges and those acting in a judicial role are not accessible.

### **Privileged information**

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

### **Advice**

Unless the public body consents, or unless the information is more than 15 years old, you may be denied access to records that could reveal advice or recommendations to or from public bodies.

A public body may not, however, deny access on the basis that it is advice if the information consists of:

- factual information;
- statistical surveys;
- public opinion polls;
- appraisals;
- economic forecasts;
- performance audits;
- consumer test reports;
- feasibility studies;
- task force, committee or council reports;
- results of environmental impact assessments;
- scientific or technical research results;
- statements of reasons for using discretionary power;
- program plans (once the plan has been approved or rejected); or
- information that is the basis for policy decisions.

### ***Cabinet confidences***

Unless the information is more than 20 years old or the decision based on the information has already been made public, you cannot access information revealing the substance of deliberations of the Cabinet or of Cabinet committees. This includes advice, recommendations, policy considerations, and draft legislation or regulations submitted or prepared for submission to the Cabinet.

### ***Local public body confidences***

Your request may be denied if disclosure could reveal a draft regulation or bylaw or the substance of a confidential meeting. If, however, the information was shared at a public meeting or it is more than 15 years old, you cannot be denied access to it on the basis of this exception.

### ***Relations with other governments***

Unless the affected government institution consents or the record has been in existence for more than 15 years (and is not law enforcement information), you cannot access information that could harm relations between Newfoundland and Labrador and other governments, including local, Canadian and foreign governments. This includes information that another government gave to the Government of Newfoundland and Labrador in confidence.

### ***Economic and other interests of a public body***

Your access to information request may be denied if disclosure could harm the economic interests of a public body. Information under this heading includes: public body trade secrets; plans that relate to the management of personnel or the administration of a public body that have not yet been implemented or made public; information that could reasonably be expected to result in the premature disclosure of a proposal or project; information in which a public body has a proprietary interest; and information whose disclosure could lead to financial loss or prejudice a competitive position.

However, access to results of product or environmental tests may not be denied under this exception unless the purpose of the test was to develop testing methods.

### ***Conservation***

Your access request may be denied if disclosure could harm conservation efforts. This includes the conservation of historic resources and of rare, endangered, threatened or vulnerable life forms.

### ***Business interests of third parties***

You cannot access a third party's trade secrets or other confidential or sensitive information if disclosure could harm the business interests of a third party. This includes tax return information and information about labour disputes.

You can, however, get access when the third party consents to the disclosure or the record containing the information has been archived and been in existence for at least 50 years.

### ***Archived records acquired from private parties***

You cannot access archived records that were acquired from private parties – that is, from people or entities other than public bodies. If the information you want was placed in an archives by a private individual or organization, contact that party directly and ask permission to access the information.

### ***Individual or public safety***

Your access request may be denied if disclosure could threaten individual or public safety.

### ***Public interest***

Despite any other provision of the *Act*, information must be released if it relates to a significant risk to the environment, or to the health and safety of anyone, and disclosure is clearly in the public interest.

### ***Information found in the following:***

Your request for the following information may be denied:

- exams or test questions;
- teaching materials;
- records created by, or for, an officer of the House of Assembly in the exercise of that role; and
- a Minister's personal or constituency records.

### ***Third parties' personal information***

A public body cannot disclose personal information, except under limited circumstances, including:

- when the relevant third party consents in writing to disclosure;

- when there are compelling circumstances affecting the applicant's health or safety;
- when another act expressly allows or requires disclosure;
- when disclosure is for research or statistical purposes;
- when the information relates to a public body employee's position, function, or remuneration;
- when the information relates to a goods or services contract with a public body;
- when the information relates to a financial discretionary benefit to a third party;
- when disclosure is required under the *Financial Administration Act*; and
- when the information is about expenses incurred by a third party while travelling at the expense of a public body.

Furthermore, a public body may refuse to confirm or deny the existence of information if to do so could result in the disclosure of personal information.

### **Exceptions related to personal information**

For additional exceptions more relevant to personal information, see *Accessing Personal Information in Newfoundland and Labrador*.

## **HOW DO I MAKE A REQUEST?**

### **1. Check whether the information is publicly available**

### **2. Contact public bodies**

Call the public body and ask to speak with its Access and Privacy Coordinator (for contact information, see: <http://www.justice.gov.nl.ca/just/civil/atipp/coordinators.htm>). Ask whether the public body is willing to provide access to the information you want. Such informal methods can be effective. 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 Information and Privacy Commissioner.

### **3. Identify the appropriate public bodies**

#### *a) Determine whether the body is subject to access to information law*

Public bodies under the Act include the Department, Crown corporations, corporations or other bodies, most of whose members are appointed by government, and local public bodies. They do not include members of the House of Assembly or the courts.

#### *b) Determine whether the information is in the custody or control of the public body*

Access to information laws only apply to records in the custody or control of a public body. If a record is destroyed, it is no longer in the custody or control of a public body, but it is an

offence to wilfully destroy records in order to evade an access request.

#### **4. Frame your request carefully**

a) *Use government directories to identify likely sources of information*

b) *Request "records"*

Request access to records, not to information, because "record" has a specific and broad definition which includes: "information that is written, photographed, recorded or stored in any manner, but does not include a computer program or a mechanism that produced records on any storage medium."

c) *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.

d) *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.

#### **5. If you need help**

If you need help, ask the relevant public body. It is required to help you with your request. For contact information, see: <http://www.justice.gov.nl.ca/just/civil/atipp/coordinators.htm>.

### **DO I HAVE TO USE A FORM?**

You must use a form unless you have a limited ability to read or write in English, or unless you have a disability that impairs your ability to make a request in writing. The form can be found at: <http://www.justice.gov.nl.ca/just/civil/atipp/forms.htm>.

### **WHAT WILL IT COST?**

There is a \$5 application fee for making an access request. In addition, you may be charged for the costs of producing the record at the rate of \$15/hour (the first two hours are free). You will also be charged 25 cents per page for copying.

The public body will send you an estimate of the total fee, if it is more than \$50, before it begins any search on your behalf. If you do not reply within 30 days, the body will assume you have abandoned your request and no further action will be taken.

If you are requesting access to your own personal information you are only subject to the \$5 application fee.

### **HOW LONG WILL IT TAKE?**

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

A transfer to another body is only allowed when:

- the record is in the custody or under the control of the public body to which your request is being transferred; or
- the record was produced by or for the public body to which your request is being transferred.

A public body can extend the time limit for responses by up to an additional 30 days. The time limit for responses may only be extended when:

- your request does not provide enough detail for the public body to identify the requested record;
- you have requested a large number of records, or a large number of records must be searched, and responding within 30 days would unreasonably interfere with the operations of the public body; or
- the public body needs time to consult with a third party before deciding whether to grant access to a record.

Failure to respond to a request within 30 days is considered a denial of access. You can complain to the Information and Privacy Commissioner about both denial of access and failure to respond on time.

### **WHAT ARE MY OPTIONS REGARDING FORMAT?**

#### ***Copies v. originals***

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

### **Language**

In Newfoundland and Labrador, you do not have the option of requesting that information be provided in a language other than English.

### **Alternative formats**

A public body is not required to provide records in alternative formats for the hearing or seeing impaired. It will nevertheless often try to accommodate such requests.

### **Electronic format**

If the record can be reproduced using the public body's normal equipment, a public body will provide you with an electronic copy. The body may refuse to provide an electronic copy if to do so would unreasonably interfere with its operations.

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

If you are not satisfied with a public body's response to your access request, you have two avenues of appeal. First, you have the right to complain to the Office of the Information and Privacy Commissioner (OIPC). Alternatively, you may apply to a judge of the Supreme Court Trial Division. The OIPC can only make recommendations, whereas a court can make binding decisions. Nevertheless, the OIPC process is generally faster and less costly than going to court.

Note that if you choose to approach the court, you cannot also request a review from the OIPC, although another party may do so.

For more information, see *Appealing Access to Information Decisions in Newfoundland and Labrador*.