

## ACCESSING GOVERNMENT INFORMATION IN

# Nova Scotia

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### RESOURCES

***Freedom of Information and Protection of Privacy Act (FOIPOP) and Regulations***

[www.gov.ns.ca/legislature/legc/statutes/freedom.htm](http://www.gov.ns.ca/legislature/legc/statutes/freedom.htm)

[www.gov.ns.ca/just/regulations/regs/foiregs.htm](http://www.gov.ns.ca/just/regulations/regs/foiregs.htm)

***Part XX of the Municipal Government Act***

<http://www.gov.ns.ca/legislature/legc/index.htm>

***Freedom of Information and Protection of Privacy Review Office***

[www.foipop.ns.ca/](http://www.foipop.ns.ca/)

***Government guide***

[www.gov.ns.ca/just/foi/foiquest.htm](http://www.gov.ns.ca/just/foi/foiquest.htm)

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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)*

## WHO CAN REQUEST GOVERNMENT INFORMATION?

Any person can request access to government information.

## WHAT INFORMATION CAN I ACCESS?

You have the right to access any record under the control of a public body or municipality, subject to certain exceptions described below. Public bodies include the Government of Nova Scotia, municipalities, educational bodies (e.g. school boards, universities) and health care bodies. A list of public bodies can be found in the Schedule to *FOIPOP*, which can be found at: <http://www.gov.ns.ca/legislature/legc/statutes/freedom.htm>. Note that this list may not be complete.

## WHAT ARE THE EXCEPTIONS TO MY RIGHT OF ACCESS?

Certain information is not accessible through a freedom of information request because it is not subject to the provisions of the *FOIPOP Act*. Some of these records may, however, be accessible through other means, and these include:

- court records;
- public records or records available for purchase;
- hospital patient records that are subject to the provisions of the *Hospitals Act*. This information is usually available for a fee to the patients themselves;
- vital statistics records (births, deaths, marriages etc.); and
- records in the Public Archives or municipal archives if not donated by a public body or the municipality.

Other information that is not subject to *FOIPOP* may not be accessible, and this information includes:

- judges' records, or a note, communication, or draft decision of anyone acting in a judicial or quasi-judicial capacity;
- records of the Ombudsman, Conflict of Interest Commissioner, or the *FOIPOP* Review Officer if these relate to the exercise of their functions;
- questions to be used on an examination or test;
- records relating to an ongoing prosecution; and
- representations to the *FOIPOP* Review Officer.

Even if information *is* subject to the *Act*, you may still be denied access to it in certain circumstances, such as those described below.

### **Another Act prevails**

If the information you want is governed by any Act that is listed in the *FOIPOP Act* or that

specifies that the *FOIPOP Act* does not apply, you may be denied access to 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; harm investigative techniques; reveal confidential sources of information; endanger anyone; jeopardize the security of any jail or any other property; deny someone a fair trial or an impartial adjudication; expose the source of the information to civil liability, etc. However, once a prosecution is completed, the public body or municipality must disclose information about any decision not to prosecute. Furthermore, the public body or municipality may refuse to confirm or deny the existence of any information subject to this exemption.

### ***Privileged information***

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

### ***Advice***

Unless the information is more than five years old, you may be denied access to records that could reveal advice to or from public bodies or municipalities.

### ***Cabinet confidences***

Unless Cabinet consents, or unless the information is more than ten years old, you may be denied access to information revealing the substance of deliberations of the Cabinet or of Cabinet committees. This includes advice, recommendations, policy considerations and draft legislation. However, information that provides background to a cabinet decision must be disclosed if the decision has already been implemented or made public, or the information is more than five years old. Background information includes factual material, public opinion polls and final audits.

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

Unless Cabinet approves disclosure, a public body may deny you access to information if disclosure could harm relations between Nova Scotia and other governments, including local, Canadian and foreign governments. This also applies to information obtained in confidence from another government, their branches, or from an international governmental organization.

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

Your access to information request may be denied if disclosure could harm the economic interests of a public body or municipality. Information under this heading includes: public body or municipal trade secrets; information in which a public body or municipality has a proprietary interest; information whose disclosure could lead to financial loss or prejudice a competitive position; management or personnel plans; and information about negotiations.

However, access must be granted to results of product or environmental tests unless the purpose of the test was to develop testing methods or to determine whether a product should be purchased.

### ***Conservation***

Your access request may be denied if disclosure could harm conservation efforts. This includes the conservation of: fossil, natural and heritage sites and rare, endangered, threatened or vulnerable life forms.

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

Generally, unless the third party consents, you cannot access a third party's trade secrets or other commercially sensitive information if the information was provided in confidence and disclosure could harm the business interests or competitive position of a third party.

### ***Third party privacy***

Your access request will be denied if disclosure would unreasonably invade a third party's privacy. Disclosure of the following will be presumed to be an unreasonable invasion of a third party's privacy:

- personal health information;
- information that is part of a law enforcement record;
- financial information related to a third party's taxation, income, financial situation or receipt of social assistance;
- a third party's personal recommendations, character references or personnel evaluations;
- a third party's employment or educational history;
- information revealing the race, ethnic origin, religious or political beliefs, or sexual orientation of a third party; and
- a third party's name together with his or her address or telephone number if this information is to be used for solicitation.

In addition to the list above, other information may violate a third party's privacy, and in determining whether this is the case a public body or municipality will consider all relevant

circumstances including:

- whether disclosure is desirable in order to subject the activities of a public body or municipality to public scrutiny;
- whether disclosure is likely to promote public health and safety or the protection of the environment;
- whether disclosure will help determine an applicant's rights;
- whether disclosure could expose a third party to harm;
- whether the information has been provided in confidence;
- whether disclosure could help determine the claims of aboriginal peoples;
- whether the information is accurate and reliable; and
- whether disclosure could damage a third party's reputation.

There are, however, circumstances in which disclosure of personal information is deemed not to be unreasonable and is therefore permitted or required. These include:

- when the relevant third party consents in writing to disclosure;
- when there are compelling circumstances affecting the applicant's health or safety;
- when another statute expressly allows or requires disclosure;
- when disclosure is for research purposes;
- when the information relates to a public body or municipal employee's salary, classification, benefits, or expenses;
- when the information relates to a third party's travel expenses in relation to government work;
- when the information relates to a goods or services contract with a public body or municipality; or
- when the information relates to the conferral of a discretionary benefit by the public body or municipality.

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

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

### ***Academic research***

Public bodies may refuse to disclose information related to academic research. However, they will generally disclose the title of the research project and the amount of funding it has received.

### ***Academic references***

A university may deny you access to records that are opinions about you if they were compiled solely for the purpose of determining your suitability for university employment, university admission, or the receipt of any award.

### **Some hospital records**

You may be denied access to records related to research related to medical education or improvement. Furthermore, access to a patient's medical or hospital records is determined solely by the *Hospitals Act*.

### **Labour conciliation records**

You may be denied access to records relating to labour conciliation.

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

For exceptions more relevant to personal information, see *Accessing Personal Information in Nova Scotia*.

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

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

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

Call the public body or municipality and ask if it 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 Review Officer.

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

a) *Determine whether the organization is subject to the FOIPOP Act or Part XX of the Municipal Government Act*

Nova Scotia's *FOIPOP Act* applies to government departments, boards, commissions, foundations, agencies, tribunals, associations, and bodies whose directors are appointed by the government. It also applies to the N.S. Public Archives, hospitals, universities, school boards, local public bodies and some colleges. While not all-inclusive, there is a list of public bodies attached as a schedule to the *FOIPOP Act*. See:

<http://www.gov.ns.ca/legislature/legc/statutes/freedom.htm>.

The *FOIPOP* provisions of *Part XX* of the *Municipal Government Act* apply to municipalities and municipal bodies.

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

Access to information laws only apply to records in the custody or control of a public body or municipality. If a record is destroyed, it is no longer in the custody or control of a public body, but records may only be destroyed in accordance with approved retention and destruction schedules. It is an offence to wilfully destroy records in order to evade an access request.

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

*a) Contact the public body or municipality's FOIPOP Administrator for help in determining what records should be requested*

*b) Request "records"*

While the *FOIPOP Act* uses both the terms "information" and "records", it specifies that access rights relate to "records". Thus, you should request access to records rather than to information, because "record" has a specific and broad definition which includes any recorded information in any form. The request should not be framed as a question, but rather as a request for records containing specific information.

*c) Specify what types of records are being sought and for which time period (e.g. January-March 2005)*

Enter into a dialogue with the *FOIPOP Administrator* of the public body or municipality to ensure that he/she understands exactly what types of records you are seeking. This will not only help ensure you receive only relevant documents but may also reduce the time required to provide you with access and may save you money on fees.

You are not required to tell the *FOIPOP Administrator* why you want the records, but doing so may help him or her to find the records you are seeking.

*d) Be specific*

It is a good idea not to request everything available on a subject over a long period of time. The more focused your request is, the less likely the public body or municipality will request a time limit extension on the grounds that answering the request within 30 days would unreasonably interfere with its operations. Focused and specific requests can also reduce the likelihood of large processing fees.

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

If you need help, ask the relevant *FOIPOP Administrator*. He or she is required to help you with your request. The mailing address and phone numbers of each *FOIPOP Administrator* are available at:

<http://www.foipop.ns.ca/content/Publications/FOIPOP%20Act%20Administrators.pdf>

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

No, you do not have to use a form, but the request must be made in writing.

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

In Nova Scotia there is a \$25 application fee for requesting government information (there is no fee for requesting your own personal information). In addition, you may be charged for expenses related to the time staff spends finding and retrieving records (at the rate of \$15/hour) and for the cost of copying, mailing and faxing.

The public body or municipality will send you an estimate of the total fee before it begins any search on your behalf. If you agree to the fee, you may be asked to pay some or all of it in advance. You cannot be charged more than the estimate, and if the estimate exceeds the actual cost, you pay only the actual cost.

You may ask to have some or all of the fees waived. This request may be granted if:

- you can't afford the fee; or
- releasing the information is in the public interest.

The public body or municipality must reply to your fee-waiver request in writing. If you are not satisfied with the response, you may complain to the review officer.

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

The public body or municipality 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, the transfer must be done within ten days (unless permission is granted by the review officer) 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 or municipality to which your request is being transferred; or
- the record originated with, or was first obtained by, the public body or municipality to which your request is being transferred.

A public body or municipality can extend the time limit for responses by up to 30 days or, with the review officer's permission, for a longer period. The time limit for responses may only be extended when:

- your request does not provide enough detail for the public body or municipality to identify the requested record;
- you have requested a large number of records and responding within 30 days would unreasonably interfere with the operations of the public body or

- municipality; or
- the public body or municipality needs time to consult with a third party or another public body before deciding whether to grant access to a record.

If the public body or municipality extends the time limit, it must inform you in writing, stating the reason, indicating when a response may be expected, and stating that a complaint about the extension may be made to the review officer.

Where clarification of the types of records requested has been sought by the public body or municipality, or a fee estimate has been provided for processing the application, the 30-day response clock may be temporarily suspended. The clock resumes when clarification is received, or the fee estimate has been paid or waived.

## **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 or municipality may impose one format (copy or original) depending on considerations of length and the nature of the record.

### ***Language***

There is no provision for requesting that information be provided in a language other than that of the original record.

### ***Alternative formats***

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

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

If you are not satisfied with a public body or municipality's response to your access request, you have two options for appeal. First, you can request a review by the Nova Scotia Freedom of Information and Protection of Privacy review officer. Alternately, you may file an appeal at the Supreme Court of Nova Scotia. This second option is only available if there is no third party involved or if all third parties consent to the appeal to the Supreme Court.

For more information, see *Appealing Access to Information Decisions in Nova Scotia*.