

ACCESSING GOVERNMENT INFORMATION IN THE

Northwest Territories

RESOURCES

Access to Information and Protection of Privacy Act

http://www.justice.gov.nt.ca/Legislation/..%5CPDF%5CACTS%5CAccess_to_Information.pdf

Northwest Territories Access and Privacy Guide

http://www.justice.gov.nt.ca/ATIPP/atipp_request.htm

Northwest Territories Access and Privacy Directories

http://www.justice.gov.nt.ca/pdf/ATIPP/Directory_2004.pdf

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 information held by the government.

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 departments and offices of the government of the Northwest Territories, as well as education authorities, health and social services authorities and other public bodies, agencies, commissions, etc. Public bodies do not include the Office of the Legislative Assembly or members of the Executive Council.

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. Note, however, that if one of these exceptions applies and it is possible to sever the inaccessible material from a record, you are entitled to access to the remaining record.

Publicly available information

You may be denied access to information that is 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 six months of the date when the request is received. For example, information that has been placed in the territorial archives is exempt from access to information requests because it is already accessible to the public.

If your request is refused because the information will be available within six months, the public body must inform you when it becomes available. If it is still not available after six months, the public body must grant you access.

Frivolous or vexatious request

Your request may be denied if it is frivolous or vexatious, if it is not made in good faith, or if it concerns a trivial matter.

Another Act prevails

If the information you want is governed by a statute that specifies that the *Access to Information and Protection of Privacy 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: jeopardize national security; reveal investigative techniques or details of an investigation; reveal confidential 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. In addition, if the disclosure of information is prohibited by law, your request for access will be denied. Furthermore, the public body may refuse to confirm or deny the existence of such information.

However, you are entitled to access information that:

- is part of a report of a routine inspection conducted by an agency authorized to enforce laws;
- consists of statistics related to the success rate of law enforcement; or
- contains reasons for deciding not to prosecute someone.

Court records

You cannot access personal information found in court records. In addition, the personal notes of judges and those acting in a judicial role are not accessible. However, court administration records are accessible and court records relating to a criminal prosecution are accessible after the proceedings are over.

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 information is more than 15 years old, you may not be granted access to records that could reveal advice to or from public bodies. The term 'advice' is used broadly and includes opinions, recommendations, proposals, analyses, policy options, consultations, deliberations, unimplemented administrative plans, draft law at the executive level, agendas or minutes of meetings, or any information that could likely result in disclosure of a pending policy or budgetary decision.

A public body must, however, give access to:

- statistical surveys;
- results of certain environmental tests;
- certain feasibility study results;
- guidelines issued to employees;

- statements of reasons for using discretionary power; and
- rules or policies for interpreting law or administering a program.

Cabinet confidences

Unless Cabinet consents, or unless the information is more than 15 years old, you will be denied access to information revealing the substance of deliberations of the Cabinet or of Cabinet committees. This includes information contained in agendas, policy analyses, proposals and communications among ministers.

Relations with other governments

You may be refused access to information that could harm relations between the government of the Northwest Territories and other governments, including local, Canadian and foreign governments. This includes information given to the government in confidence, either explicitly or implicitly. However, if all relevant governments consent or if the information is in a record that is more than 15 years old, you may be granted access.

Economic and other interests of a public body

Your access to information request may be refused if disclosure could harm the economic interests of a public body. Information under this heading includes: public body trade secrets; information in which a public body has a proprietary interest; information whose disclosure could lead to financial loss or prejudice a competitive position, and research conducted by employees of the territory.

Similarly, access may be denied if disclosure could have an economic impact on individuals. This includes information regarding contemplated changes to: taxation; government borrowing; operating conditions of financial institutions; and the purchase or sale of securities, bonds or currency.

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 sites or natural sites; heritage sites or sites of aboriginal cultural significance; and rare, endangered, threatened or vulnerable life forms.

Testing procedures, tests and audits

You may be denied access to information related to testing or auditing procedures, or to details of specific future tests or audits, if disclosure could prejudice the tests or audits.

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.

You may, however, get access when the third party consents to the disclosure or when an Act of the territory requires disclosure.

Third party privacy

Your access request will be denied if disclosure would invade a third party's privacy. Furthermore, a public body may refuse to confirm or deny the existence of information if to do so could invade a third party's privacy.

Disclosure of the following will be considered an invasion of a third party's privacy:

- a third party's personal health information;
- a third party's personal information that is part of a law enforcement record (except to the extent that disclosure is necessary to pursue prosecution);
- financial information related to a third party's taxation, income, financial situation or receipt of social assistance;
- a third party's employment or educational history;
- a third party's personal recommendations, character references or personnel evaluations if they could reveal the identity of the recommender or referee;
- a third party's name (in some circumstances); and
- information revealing the race, ethnic origin, religious beliefs, gender, age, ancestry or place of origin of a third party.

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 will consider all relevant circumstances including:

- whether disclosure is desirable in order to subject the activities of a public body 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 will help to validate claims or grievances of aboriginal people;
- whether disclosure could expose a third party to harm;

- whether the information has been provided in confidence;
- whether the information is accurate and reliable; and
- whether disclosure could damage a third party's reputation.

There are, however, circumstances when, regardless of the criteria above, disclosure will be permitted. 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 law expressly allows or requires disclosure;
- when disclosure is for research purposes and is in accordance with ATIPP;
- when the information relates to a public body employee's salary, classification, benefits, or expenses;
- 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;
- or
- when the information relates to travel expenses.

When a third party's information is at risk of being disclosed, the third party will be notified and given an opportunity to respond. Access to the information will be delayed until the head of the public body makes a decision regarding disclosure.

Archived records acquired from private parties

You do not have a right to 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.

Examination and Test questions

You do not have a right to access examination or test questions.

Exceptions related to personal information

For exceptions relevant to personal information, see *Accessing Personal Information in the Northwest Territories*.

HOW DO I MAKE A REQUEST?

1. Contact public bodies

Contact the public body 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 Office of the Information and Privacy Commissioner (OIPC).

Contact information for AIIPP coordinators for the Northwest Territories can be found at: <http://www.justice.govnt.ca/pdf/ATIPP/Public%20Bodies%20and%20ATIPP%20Coordinators.pdf>

2. Identify the appropriate public bodies

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

The Act applies to departments, branches or offices of the governments of the Northwest Territories, or their agencies, boards, commissions, corporations, offices or other bodies designated in the regulations. It does not apply to the Office of the Legislative Assembly or the office of a member of the Legislative Assembly or a member of the Executive Council.

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.

3. Frame your request carefully

a) Request "records"

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

b) 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.

c) *Be specific*

The more specific your request, the faster and less costly the production of records is likely to be. For example, a public body is less likely request a time extension if the request is specific than if it is general.

4. If you need help

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

DO I HAVE TO USE A FORM?

You do not have to use a form, but your request must be in writing. Consider using the form since it can help you structure your request. It is available at:
http://www.justice.gov.nt.ca/pdf/ATIPP/access_request.pdf

Your request may be made orally if you have limited ability to read and write in English or French, or if you are physically disabled in a way that limits your ability to make a written request.

WHAT WILL IT COST?

There is a \$25 fee for requesting access to government information (but there is no fee for requesting your own personal information). In addition, you may be charged for the cost of retrieving and copying the record if the actual cost totals more than \$150.

Before any work is done on your behalf, an estimate of the fees will be sent you. You have 20 days to accept the estimate or to modify your request so as to reduce the fees.

You may ask the head of the public body to waive some or all of the fees. This request may be granted if you can't afford the fee, or it would otherwise be fair to waive the fee.

HOW LONG WILL IT TAKE?

The public body 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 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 originated with, or was first obtained by, the public body to which your request is being transferred.

A public body can extend the time limit for responses by up to 30 days or, with the Commissioner'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 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;
- a large number of records must be searched and responding within 30 days would unreasonably interfere with the operations of the public body
- the public body needs time to consult with a third party or another public body before deciding whether to grant access to a record; or
- a third party requests a review of a decision to grant access.

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

WHAT ARE MY OPTIONS REGARDING FORMAT?

Copies or 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

A public body will give access in one of the of the Northwest Territories' 11 official languages if the record already exists in that language or if it considers that there is a public interest in doing so. If there is such a public interest, no translation fee will be charged.

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.

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, there are two avenues of appeal. First, you have the right to request a review of its decision to the Office of the Information and Privacy Commissioner (OIPC). Second, if the OIPC finds in favour of the public body, then the applicant or third party may request a review of the decision by a judge of the Supreme Court of the Northwest Territories.

For more information, see *Appealing Access to Information Decisions in the Northwest Territories*.