

ACCESSING GOVERNMENT INFORMATION IN

Nunavut

RESOURCES

Nunavut Access to Information and Protection of Privacy Act

http://nunavutcourtofjustice.ca/library/consol-stat/CSNu_1999_002_Access_Info_Privacy.pdf

Nunavut Access and Privacy Guide

<http://www.gov.nu.ca/Nunavut/atip/ai.html>

Nunavut Access and Privacy Directories

<http://www.gov.nu.ca/Nunavut/atip/ep.html>

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 a public body, subject to certain exceptions described below.

Public bodies include departments and offices of the governments of Nunavut and its agencies, commissions, etc. Public bodies do not include the Office of the Legislative Assembly or members of the Executive Council.

When an exception to your right of access applies but the excepted information can be severed from the rest of the information that you requested, you are entitled to access the rest of the information.

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:

Information available to the public

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 is not yet available but 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 may be denied because you can retrieve it yourself without filing an access request.

If your request is denied 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 may not deny access on the grounds that it is information available to the public.

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 an Act that specifies that the *Access to*

Information and Protection of Privacy Act (ATIPP) 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; 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 most 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 be denied 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 may not, however, use the advice exception to deny 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 denied access to information that could harm relations between the government of Nunavut 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 denied 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 of the requested information would invade a third party's privacy. Furthermore, a public body may refuse to confirm or deny the existence of information if doing 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;
- 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; and
- when the information relates to a public body employee's travel expenses.

When disclosure of a third party's personal information is being considered, the third party will be notified and given an opportunity to be heard before 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.

Exceptions related to personal information

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

HOW DO I MAKE A REQUEST?

1. Contact public bodies

Contact a representative of the public body and ask if the public body is willing to provide access to the information you want. Such informal methods can be effective, but note that informal access-to-information requests do not trigger time limits for responding to you, nor do they trigger other rights, such as the right to complain to the Office of the Information and Privacy Commissioner (OIPC).

Contact information for the ATIPP coordinators for Nunavut can be found at:
<http://www.gov.nu.ca/Nunavut/atip/ep.html>

2. Identify the appropriate public bodies

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

The *ATIPP Act* applies to departments, branches or offices of the governments of Nunavut and its agencies, boards, commissions, corporations, and offices. 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" and not to "information" because "record" has a specific and broad definition: a record is "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 to only the most relevant materials. This process can also shed light on other issues you may not have been aware of. A drawback is that this is a two-step request process.

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. The Nunavut form is available at: <http://www.gov.nu.ca/Nunavut/atip/accesstoinformation.pdf>.

Your request can 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 obtaining government information. You may also be charged for retrieval and copying costs if those costs exceed \$150. Unlike a request for personal information, for government information there is a charge of \$6.75 per quarter hour for time spent searching and compiling the information. You must also pay the cost of photocopying, and the current rate is \$0.25 per page. Additional charges apply for making reproductions of photographs, computer disks, or microfiche.

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. If you accept the fees charged, you must pay half of the fees up front, and the other half when receiving your information.

You may write to head of the public body to request that some or all of the fees be waived. 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 the denial of access and the 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 Nunavut's official languages. If the record already exists in the language you have specified, then you be able to access the record in that language. If the record only exists in another language, it will be translated if there is a public interest in doing so. No translation fee will be charged.

Alternative formats

A public body is not required to provide records in alternative formats for the hearing or vision 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, you may request a review of its decision to the Office of the Information and Privacy Commissioner (OIPC).

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