

# ACCESSING GOVERNMENT INFORMATION IN

# Yukon

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## RESOURCES

### **Access to Information and Protection of Privacy Act (ATIPP)**

<http://www.ombudsman.yk.ca/infoprivacy/atippact.pdf>

### **Office of the Yukon Ombudsman and Information and Privacy Commissioner**

<http://www.ombudsman.yk.ca>

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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 government departments and bodies that are agents of the Government of Yukon.

## **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 those described below. 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.

### ***Information available to the public***

You may be denied access to information that is available to the public. This includes information available for purchase or that will be published or released to the public within 90 days of the date when the request is received.

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

If an Act specifies that the *Access to Information and Protection of Privacy Act (ATIPP)* does not apply, you may be denied access to records governed by that Act.

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

Your access request may be denied if disclosure could be harmful to law enforcement. This includes information that would:

- reveal investigative techniques or details of an investigation;
- reveal information about or from a confidential source;
- endanger anyone;
- deny someone a fair trial or otherwise harm legal proceedings; or
- facilitate the escape of a person in custody.

You may also be denied access to information created in relation to an investigation about the workplace harassment of any employee of the Government of Yukon.

Furthermore, the public body may refuse to confirm or deny the existence of such

information.

Your request for information may be granted, however, if the requested information consists of reports of routine inspections carried out to ensure compliance with Yukon law or reports evaluating law enforcement programs.

### **Privileged information**

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

### **Advice**

A public body may use its discretion in granting access to advice unless the information is more than 15 years old, in which case access must be granted. The term 'advice' is used broadly and includes opinions, recommendations, and drafts of laws or regulations.

A public body must, however, generally grant access to:

- factual material;
- statistical surveys, except where the data have not all been gathered or disclosure would reveal personal information;
- property appraisals;
- environmental impact assessments;
- reports of committees or task forces established to make recommendations to a public body;
- decisions constituting an exercise of a discretionary power or an adjudicative function, and reasons for those decisions; and
- guidelines or statements of policy adopted by a public body.

### **Cabinet confidences**

Your access request will be denied if disclosure would reveal the substance of deliberations of the Executive Council, or any of its committees. This includes information, advice, and recommendations.

This exception does not apply when:

- the information is in a record that is at least 15 years old; or
- the information is found in an appeal decision made by the Executive Council or any of its committees; or
- the information is in a record that provides background information to the Executive Council or any of its committees for the purpose of making a decision, and the decision has either been made public, has already been implemented, or was made or considered at least five years ago.

### **Relations with other governments**

Your access request may be denied if disclosure could harm relations between Yukon and other governments, including Yukon First Nations governments, municipal, Canadian and foreign governments. It may also be denied if disclosure would harm negotiations related to aboriginal self government or land claims settlements. If, however, the information is at least 15 years old, this exception does not apply.

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

Your access 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 related to the management of personnel or the administration of a public body;
- information whose disclosure would result in an undue financial loss or gain to a third party; and
- information related to negotiations or arbitrations to which the public body is a party.

However, access must be granted to results of product or environmental tests unless the purpose of the test was to develop testing methods or if the testing was done for a fee.

### **Conservation**

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

### **Examinations**

You will be denied access to information that consists of examination or test questions.

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

You may be denied access to information related to a third party's business interests if three criteria are met. First, the information must relate to a third party's trade secrets or other information of a commercial, financial, scientific or technical nature. Second, the information must have been supplied to the public body in confidence. Third, disclosure must be reasonably likely to harm the third party's business interests, or result in undue financial loss or gain to a third party, or reveal information about labour relations, or have a detrimental

effect on third parties' willingness to provide such information to public bodies.

You will, however, be granted access if the third party consents to the disclosure, or the record consists of a property assessment.

### **Third party privacy**

Your access request will be denied if disclosure would be an unreasonable invasion of a third party's personal privacy. Disclosure is generally presumed to be an unreasonable invasion of a third party's personal privacy if the record contains:

- 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; or
- a third party's name together with his or her address or telephone number.

In addition to the list above, other information may violate a third party's privacy. In determining whether disclosure constitutes an unreasonable invasion of a third party's personal privacy, a public body must 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;
- whether disclosure will help determine an applicant's rights;
- whether disclosure could expose a third party to financial or other harm, including damage to his or her reputation;
- whether the information has been provided in confidence; and
- whether the information is accurate and reliable.

There are, however, circumstances when disclosure will be permitted, including:

- when the relevant third party consents to disclosure;
- when there are compelling circumstances affecting anyone's health or safety;
- when another Act expressly allows or requires disclosure;
- when the information relates to a public body employee's position, functions, or salary range;
- 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 the information relates to a licence, permit, or other similar discretionary benefit granted to a third party; and
- when the information relates to travel expenses paid by a public body.

### **Archived records**

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 party, 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 health or safety.

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

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

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

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

The Yukon government published a directory of records in 2001. It is available through Yukon's Access to Information website at: <http://www.atipp.gov.yk.ca/>. It is also available at the Yukon archives, the Whitehorse Public Library, from the Information and Privacy Commissioner or from any public body's ATIPP Coordinator.

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

Call 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 request a review by the Commissioner.

Contact information can be found at: <http://www.gov.yk.ca/depts>.

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

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

There is no list of public bodies. If you are unsure whether an organization is a public body, check with the Records Manager at the ATIPP Office. Contact information can be found at: <http://www.atipp.gov.yk.ca>.

If you disagree with the Records Manager as to whether an entity is a public body, you may

bring a complaint to the Commissioner. Contact information can be found at: [http://www.ombudsman.yk.ca/infoprivacy/info\\_contact.html](http://www.ombudsman.yk.ca/infoprivacy/info_contact.html).

*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 the government directory 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: "notes, images, audiovisual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records."

A request must provide enough detail to identify the record.

*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 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) Consider stating the purpose of your request*

You are not required to state the purpose of your request, but doing so may help the public body locate the information more quickly.

*e) Narrow your request and be specific*

Unless absolutely necessary, try not to ask for all records related to a subject. You can narrow your request by specifying file numbers, dates, and any information you want to exclude from your request. The narrower and more specific your request, the more likely you are to get a speedy and less costly response. For example, a narrow request is less likely to result in a time limit extension because it is unlikely to unreasonably interfere with the operations of the public body.

## 5. If you need help

If you need help, ask the Records Manager, who is required to help you with your request and to respond openly, accurately and completely.

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

You do not have to use a form, but your request must be made in writing. A form is available, however, and it can help you to structure your request. It can be found at: [http://www.gov.yk.ca/forms/4500/yg4552\\_b.pdf](http://www.gov.yk.ca/forms/4500/yg4552_b.pdf).

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

Fees in Yukon cannot exceed actual costs. Fees cover the cost of locating, retrieving and producing the record, preparing it for disclosure, copying it, supervising its examination, and shipping it. The first three hours of services are free.

The public body will send you an estimate of the total fee. If you agree to the fee, some or all the fee may be required before the public body will begin work on your request.

If the actual cost of processing your request is less than the estimate, you only pay the actual cost.

You may ask to have some or all of the fees waived. This request may be granted if paying the fee would cause undue financial hardship to the applicant. If your request to waive fees is denied, you may request that the Commissioner review this decision.

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

The public body must make every reasonable effort to respond to your request within 30 days of receiving it.

The Records Manager can extend the time limit for responses 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;
- 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 asks the Commissioner for a review.

You may request that the Commissioner review a decision to extend the time limit for responding to a request.

Unless an extension has been granted, failure to respond to a request within 30 days is considered a denial of access. You can request that the Commissioner review the denial of access.

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

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

You may have copies sent to you or you may view the originals. A record must be provided in a form usable by the applicant as long as creating it would not unreasonably interfere with the operations of the public body.

### ***Language***

In Yukon, you do not have the option of requesting that information be provided in a language other than that in which the record exists. In other words, the public body will not translate records.

### ***Alternative formats***

A public body is not required to provide records in alternative formats for the hearing or seeing impaired.

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

If you are not satisfied with a public body's response, you have the right to request a review by the Commissioner. For more information, see *Appealing Access to Information Decisions in Yukon*.