

## Summary of Access to Information and Protection of Privacy (ATIPP) Exceptions

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Note: This listing is provided for reference only. The full and complete listing is using the below link

<https://www.assembly.nl.ca/legislation/sr/statutes/a01-2.htm>

## 27. Cabinet confidences

- (1) In this section, "cabinet record" means
  - (a) advice, recommendations or policy considerations submitted or prepared for submission to the Cabinet;
  - (b) draft legislation or regulations submitted or prepared for submission to the Cabinet;
  - (c) a memorandum, the purpose of which is to present proposals or recommendations to the Cabinet;
  - (d) a discussion paper, policy analysis, proposal, advice or briefing material prepared for Cabinet, excluding the sections of these records that are factual or background material;
  - (e) an agenda, minute or other record of Cabinet recording deliberations or decisions of the Cabinet;
  - (f) a record used for or which reflects communications or discussions among ministers on matters relating to the making of government decisions or the formulation of government policy;
  - (g) a record created for or by a minister for the purpose of briefing that minister on a matter for the Cabinet;
  - (h) a record created during the process of developing or preparing a submission for the Cabinet; and
  - (i) that portion of a record which contains information about the contents of a record within a class of information referred to in paragraphs (a) to (h).
- (2) The head of a public body shall refuse to disclose to an applicant
  - (a) a cabinet record; or
  - (b) information in a record other than a cabinet record that would reveal the substance of deliberations of Cabinet.
- (3) Notwithstanding subsection (2), the Clerk of the Executive Council may disclose a cabinet record or information that would reveal the substance of deliberations of Cabinet where the Clerk is satisfied that the public interest in the disclosure of the information outweighs the reason for the exception.
- (4) Subsections (1) and (2) do not apply to
  - (a) information in a record that has been in existence for 20 years or more; or
  - (b) information in a record of a decision made by the Cabinet on an appeal under an Act.

## 28. Local public body confidences

- (1) The head of a local public body may refuse to disclose to an applicant information that would reveal
  - (a) a draft of a resolution, by-law or other legal instrument by which the local public body acts;
  - (b) a draft of a private Bill; or
  - (c) the substance of deliberations of a meeting of its elected officials or governing body or a committee of its elected officials or governing body, where an Act authorizes the holding of a meeting in the absence of the public.
  
- (2) Subsection (1) does not apply where
  - (a) the draft of a resolution, by-law or other legal instrument, a private Bill or the subject matter of deliberations has been considered, other than incidentally, in a meeting open to the public; or
  - (b) the information referred to in subsection (1) is in a record that has been in existence for 15 years or more.

## 29. Policy advice or recommendations

- (1) The head of a public body may refuse to disclose to an applicant information that would reveal
  - (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister;
  - (b) the contents of a formal research report or audit report that in the opinion of the head of the public body is incomplete and in respect of which a request or order for completion has been made by the head within 65 business days of delivery of the report; or
  - (c) draft legislation or regulations.
  
- (2) The head of a public body shall not refuse to disclose under subsection (1)
  - (a) factual material;
  - (b) a public opinion poll;
  - (c) a statistical survey;
  - (d) an appraisal;
  - (e) an environmental impact statement or similar information;
  - (f) a final report or final audit on the performance or efficiency of a public body or on any of its programs or policies;
  - (g) a consumer test report or a report of a test carried out on a product to test equipment of the public body;
  - (h) a feasibility or technical study, including a cost estimate, relating to a policy or project of the public body;
  - (i) a report on the results of field research undertaken before a policy proposal is formulated;
  - (j) a report of an external task force, committee, council or similar body that has been established to consider a matter and make a report or recommendations to a public body;
  - (k) a plan or proposal to establish a new program or to change a program, if the plan or proposal has been approved or rejected by the head of the public body;
  - (l) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy; or
  - (m) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.
  
- (3) Subsection (1) does not apply to information in a record that has been in existence for 15 years or more.

### 30. Legal advice

- (1) The head of a public body may refuse to disclose to an applicant information
  - (a) that is subject to solicitor and client privilege or litigation privilege of a public body; or
  - (b) that would disclose legal opinions provided to a public body by a law officer of the Crown.
- (2) The head of a public body shall refuse to disclose to an applicant information that is subject to solicitor and client privilege or litigation privilege of a person other than a public body.

### 31. Disclosure harmful to law enforcement

- (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to
  - (a) interfere with or harm a law enforcement matter;
  - (b) prejudice the defence of Canada or of a foreign state allied to or associated with Canada or harm the detection, prevention or suppression of espionage, sabotage or terrorism;
  - (c) reveal investigative techniques and procedures currently used, or likely to be used, in law enforcement;
  - (d) reveal the identity of a confidential source of law enforcement information or reveal information provided by that source with respect to a law enforcement matter;
  - (e) reveal law enforcement intelligence information;
  - (f) endanger the life or physical safety of a law enforcement officer or another person;
  - (g) reveal information relating to or used in the exercise of prosecutorial discretion;
  - (h) deprive a person of the right to a fair trial or impartial adjudication;
  - (i) reveal a record that has been confiscated from a person by a peace officer in accordance with an Act or regulation;
  - (j) facilitate the escape from custody of a person who is under lawful detention;
  - (k) facilitate the commission or tend to impede the detection of an offence under an Act or regulation of the province or Canada;
  - (l) reveal the arrangements for the security of property or a system, including a building, a vehicle, a computer system or a communications system;
  - (m) reveal technical information about weapons used or that may be used in law enforcement;
  - (n) adversely affect the detection, investigation, prevention or prosecution of an offence or the security of a centre of lawful detention;
  - (o) reveal information in a correctional record supplied, implicitly or explicitly, in confidence; or
  - (p) harm the conduct of existing or imminent legal proceedings.
  
- (2) The head of a public body may refuse to disclose information to an applicant if the information
  - (a) is in a law enforcement record and the disclosure would be an offence under an Act of Parliament;
  - (b) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or a person who has been quoted or paraphrased in the record; or
  - (c) is about the history, supervision or release of a person who is in custody or under supervision and the disclosure could reasonably be expected to harm the proper custody or supervision of that person.

- (3) The head of a public body shall not refuse to disclose under this section
- (a) a report prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an Act; or
  - (b) a report, including statistical analysis, on the degree of success achieved in a law enforcement program unless disclosure of the report could reasonably be expected to interfere with or harm the matters referred to in subsection (1) or (2); or
  - (c) statistical information on decisions to approve or not to approve prosecutions.

## 32. Confidential evaluations

- (1) The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material, provided explicitly or implicitly in confidence, and compiled for the purpose of
  - (a) determining suitability, eligibility or qualifications for employment or for the awarding of contracts or other benefits by a public body;
  - (b) determining suitability, eligibility or qualifications for admission to an academic program of an educational body;
  - (c) determining suitability, eligibility or qualifications for the granting of tenure at a post-secondary educational body;
  - (d) determining suitability, eligibility or qualifications for an honour or award to recognize outstanding achievement or distinguished service; or
  - (e) assessing the teaching materials or research of an employee of a post-secondary educational body or of a person associated with an educational body.



### 33. Information from a workplace investigation

- (1) For the purpose of this section
  - (a) "harassment" means comments or conduct which are abusive, offensive, demeaning or vexatious that are known, or ought reasonably to be known, to be unwelcome and which may be intended or unintended;
  - (b) "party" means a complainant, respondent or a witness who provided a statement to an investigator conducting a workplace investigation; and
  - (c) "workplace investigation" means an investigation related to
    - (i) the conduct of an employee in the workplace,
    - (ii) harassment, or
    - (iii) events related to the interaction of an employee in the public body's workplace with another employee or a member of the public which may give rise to progressive discipline or corrective action by the public body employer.
- (2) The head of a public body shall refuse to disclose to an applicant all relevant information created or gathered for the purpose of a workplace investigation.
- (3) The head of a public body shall disclose to an applicant who is a party to a workplace investigation the information referred to in subsection (2).
- (4) Notwithstanding subsection (3), where a party referred to in that subsection is a witness in a workplace investigation, the head of a public body shall disclose only the information referred to in subsection (2) which relates to the witness' statements provided in the course of the investigation.

### 34. Disclosure harmful to intergovernmental relations or negotiations

- (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
  - (a) harm the conduct by the government of the province of relations between that government and the following or their agencies:
    - (i) the government of Canada or a province,
      - a. (ii) the council of a local government body,
    - (ii) the government of a foreign state,
    - (iii) an international organization of states, or
    - (iv) the Nunatsiavut Government; or
  - (b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies.
- (2) The head of a public body shall not disclose information referred to in subsection (1) without the consent of
  - (a) the Attorney General, for law enforcement information; or
  - (b) the Lieutenant-Governor in Council, for any other type of information.
- (3) Subsection (1) does not apply to information that is in a record that has been in existence for 15 years or more unless the information is law enforcement information.

### 35. Disclosure harmful to the financial or economic interests of a public body

- (1) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose
  - (a) trade secrets of a public body or the government of the province;
  - (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of the province and that has, or is reasonably likely to have, monetary value;
  - (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
  - (d) information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party;
  - (e) scientific or technical information obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee of priority of publication;
  - (f) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government of the province or a public body, or considerations which relate to those negotiations;
  - (g) information, the disclosure of which could reasonably be expected to prejudice the financial or economic interest of the government of the province or a public body; or
  - (h) information, the disclosure of which could reasonably be expected to be injurious to the ability of the government of the province to manage the economy of the province.
  
- (2) The head of a public body shall not refuse to disclose under subsection (1) the results of product or environmental testing carried out by or for that public body, unless the testing was done
  - (a) for a fee as a service to a person or a group of persons other than the public body; or
  - (b) for the purpose of developing methods of testing.

### **36. Disclosure harmful to conservation**

- (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to result in damage to, or interfere with the conservation of
  - (a) fossil sites, natural sites or sites that have an anthropological or heritage value;
  - (b) an endangered, threatened or vulnerable species, sub-species or a population of a species; or
  - (c) a rare or endangered living resource.

### **37. Disclosure harmful to individual or public safety**

- (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, where the disclosure could reasonably be expected to
  - (a) threaten the safety or mental or physical health of a person other than the applicant;  
or
  - (b) interfere with public safety.
- (2) The head of a public body may refuse to disclose to an applicant personal information about the applicant if the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's safety or mental or physical health.

### 38. Disclosure harmful to labour relations interests of public body as employer

(1) The head of a public body may refuse to disclose to an applicant information that would reveal

(a) labour relations information of the public body as an employer that is prepared or supplied, implicitly or explicitly, in confidence, and is treated consistently as confidential information by the public body as an employer; or

(b) labour relations information the disclosure of which could reasonably be expected to

(i) harm the competitive position of the public body as an employer or interfere with the negotiating position of the public body as an employer,

(ii) result in significant financial loss or gain to the public body as an employer, or

(iii) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer, staff relations specialist or other person or body appointed to resolve or inquire into a labour relations dispute, including information or records prepared by or for the public body in contemplation of litigation or arbitration or in contemplation of a settlement offer.

(2) Subsection (1) does not apply where the information is in a record that is in the custody or control of the Provincial Archives of Newfoundland and Labrador or the archives of a public body and that has been in existence for 50 years or more.

### 39. Disclosure harmful to business interests of a third party

- (1) The head of a public body shall refuse to disclose to an applicant information
  - (a) that would reveal
    - (i) trade secrets of a third party, or
    - (ii) commercial, financial, labour relations, scientific or technical information of a third party;
  - (b) that is supplied, implicitly or explicitly, in confidence; and
  - (c) the disclosure of which could reasonably be expected to
    - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
    - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
    - (iii) result in undue financial loss or gain to any person, or
    - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.
- (2) The head of a public body shall refuse to disclose to an applicant information that was obtained on a tax return, gathered for the purpose of determining tax liability or collecting a tax, or royalty information submitted on royalty returns, except where that information is non-identifying aggregate royalty information.
- (3) Subsections (1) and (2) do not apply where
  - (a) the third party consents to the disclosure; or
  - (b) the information is in a record that is in the custody or control of the Provincial Archives of Newfoundland and Labrador or the archives of a public body and that has been in existence for 50 years or more.

#### 40. Disclosure harmful to personal privacy

(1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where

- (a) the applicant is the individual to whom the information relates;
- (b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;
- (c) there are compelling circumstances affecting a person's health or safety and notice of disclosure is given in the form appropriate in the circumstances to the third party to whom the information relates;
- (d) an Act or regulation of the province or of Canada authorizes the disclosure;
- (e) the disclosure is for a research or statistical purpose and is in accordance with section 70;
- (f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;
- (g) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;
- (h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;
- (i) public access to the information is provided under the *Financial Administration Act*;
- (j) the information is about expenses incurred by a third party while travelling at the expense of a public body;
- (k) the disclosure reveals details of a licence, permit or a similar discretionary benefit granted to a third party by a public body, not including personal information supplied in support of the application for the benefit;

(l) the disclosure reveals details of a discretionary benefit of a financial nature granted to a third party by a public body, not including

(i) personal information that is supplied in support of the application for the benefit, or

(ii) personal information that relates to eligibility for income and employment support under the *Income and Employment Support Act* or to the determination of income or employment support levels; or

(m) the disclosure is not contrary to the public interest as described in subsection (3) and reveals only the following personal information about a third party:

(i) attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip, or

(ii) receipt of an honour or award granted by or through a public body.

(3) The disclosure of personal information under paragraph (2)(m) is an unreasonable invasion of personal privacy where the third party whom the information is about has requested that the information not be disclosed.

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation;

(c) the personal information relates to employment or educational history;

(d) the personal information was collected on a tax return or gathered for the purpose of collecting a tax;

(e) the personal information consists of an individual's bank account information or credit card information;

(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;



- (g) the personal information consists of the third party's name where
- (i) it appears with other personal information about the third party, or
- (ii) the disclosure of the name itself would reveal personal information about the third party; or
- (h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

- (a) the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;
- (b) the disclosure is likely to promote public health and safety or the protection of the environment;
- (c) the personal information is relevant to a fair determination of the applicant's rights;
- (d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;
- (e) the third party will be exposed unfairly to financial or other harm;
- (f) the personal information has been supplied in confidence;
- (g) the personal information is likely to be inaccurate or unreliable;
- (h) the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant;
- (i) the personal information was originally provided to the applicant; and
- (j) the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.

#### 41. Disclosure of House of Assembly service and statutory office records

The Speaker of the House of Assembly, the officer responsible for a statutory office, or the head of a public body shall refuse to disclose to an applicant information

- (a) where its non-disclosure is required for the purpose of avoiding an infringement of the privileges of the House of Assembly or a member of the House of Assembly;
- (b) that is advice or a recommendation given to the Speaker or the Clerk of the House of Assembly or the House of Assembly Management Commission that is not required by law to be disclosed or placed in the minutes of the House of Assembly Management Commission; or
- (c) in the case of a statutory office as defined in the *House of Assembly Accountability, Integrity and Administration Act*, records connected with the investigatory functions of the statutory office.