

Chapter 26

AN ACT TO AMEND THE ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT (Assented to September 19, 2017)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act amends the *Access to Information and Protection of Privacy Act*.

2. (1) Section 2 is amended by adding the following definitions in alphabetical order:

"business day" means a day that is not a Saturday, Sunday or holiday as defined in section 27 of the *Public Service Act*; (*jour ouvrable*)

"privacy impact assessment" means an assessment that is conducted by a public body as defined in section 2, but not including a municipality, to determine if a current or proposed program or service meets or will meet the requirements of Part 2 of this Act; (*évaluation des facteurs relatifs à la vie privée*)

(2) In the English version, section 2 is amended in paragraph (b) of the definition of "public body" by adding ", municipality" after "office".

3. (1) Subsection 3(1) is amended by striking out "and" at the end of paragraph (e), striking out the period at the end of paragraph (f) and substituting "; and", and adding the following after paragraph (f):

- (g) a record subject to solicitor-client privilege, if the holder of the privilege is the Legislative Assembly, the Speaker of the legislative Assembly, Management and Services Board, a member of the regular members' caucus or an independent officer of the legislative Assembly.

4. The following is added after section 6:

Anonymity

6.1. (1) The head of a public body shall ensure that the name of an applicant is disclosed only to a person authorized to receive the request on behalf of the public body and, where necessary, the Information and Privacy Commissioner.

Exceptions

(2) Subsection (1) does not apply to a request

- (a) respecting personal information about the applicant; or
- (b) where the name of the applicant is necessary to respond to the request and the applicant has consented to its disclosure.

Limitation

(3) The disclosure of an applicant's name in a request referred to in subsection (2) shall be limited to the extent necessary to respond to the request.

Limitation applies until final response sent

(4) The limitation on disclosure of an applicant's name under subsection (1) applies until the final response to the request is sent to the applicant.

Disclosure limited to extent necessary

(5) The disclosure of an applicant's name after the final response to the request is sent to the applicant shall be limited to circumstances where such disclosure is necessary

- (a) to avoid harm to a public body; or
- (b) to allow a public body to enforce a legal right that it may have against any person.

5. Subsection 8(1) is amended by striking out "30 days" and substituting "25 business days".

6. Paragraph 12(2)(b) is amended by striking out "30 days" and substituting "25 business days".

7. Section 13 is repealed and the following substituted:

Definition of cabinet record

- 13.** (1) In this section, "cabinet record" means
- (a) advice, proposals, requests for decisions, recommendations, analyses or policy options submitted or prepared for submission to the Executive Council or any of its committees;
 - (b) draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees;
 - (c) a discussion paper, policy analysis, proposal, advice or briefing material prepared for the Executive Council or any of its committees, excluding the sections of these records that contain factual or background material;
 - (d) an agenda, minute or other record of the Executive Council or any of its committees recording deliberations or decisions of the Executive Council or any of its committees;
 - (e) 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;
 - (f) a record created for or by a minister for the purpose of briefing that minister on a matter for the Executive Council or any of its committees;
 - (g) a record created during the process of developing or preparing a submission for the Executive Council or any of its committees; and
 - (h) 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 (g).

Cabinet record

- (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 the Executive Council or any of its committees.

15 year limit

(3) This section does not apply to information that has been in existence in a record for more than 15 years.

8. The following is added after section 13:

Municipal council confidences

13.1. (1) The head of a municipality that is designated as a public body in the regulations shall 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 municipality acts; or
- (b) the substance of deliberations of a meeting of the municipal council or a committee of the municipal council, where an Act authorizes the holding of a meeting closed to the public.

Exceptions

- (2) Subsection (1) does not apply where
- (a) the draft of a resolution, by-law or other legal instrument 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) has been in existence in a record for more than 15 years.

9. Paragraph 14(1)(a) is amended by striking out "a public body or a member of the Executive Council;" and substituting "a public body, a member of the Executive Council or a member of a municipal council of a municipality that is designated as a public body in the regulations;".

10. Paragraph 14(1)(b) is amended by striking out "or" at the end of subparagraph 14(1)(b)(ii), striking out the semi-colon at the end of subparagraph 14(1)(b)(iii) and replacing it with ", or", and inserting the following after subparagraph 14(1)(b)(iii):

- (iv) a member of a municipal council of a municipality that is designated as a public body in the regulations;

11. Section 15 is amended by renumbering it as subsection 15(1) and adding the following after it:

Approval of the holder of privilege

(2) The head of a public body shall not disclose information referred to in paragraph (1)(a) without the written approval of the holder of privilege.

Approval of the Minister of Justice or public body

(3) The head of a public body shall not disclose information referred to in paragraphs (1)(b) and (c) without the written approval of the Minister of Justice or the head of the public body on whose behalf the information was prepared.

11.1. The following is added after section 20:

Coroner's investigation or inquest

20.1. The head of a public body shall refuse to disclose to an applicant information relating to an active coroner's investigation or inquest.

12. Section 22 is repealed and the following substituted:

Confidential evaluations

22. The head of a public body may refuse to disclose to an applicant personal information that

- (a) is evaluative or opinion material;
- (b) is compiled solely for the purpose of
 - (i) determining the applicant's suitability, eligibility or qualifications for employment, or
 - (ii) awarding government contracts or other benefits; and
- (c) has been provided to the public body, explicitly or implicitly, in confidence.

13. Subsection 23(4) is amended by striking out "or" at the end of paragraph (h), striking out the period at the end of paragraph (i) and substituting "; or", and adding the following after paragraph (i):

- (j) the information is disclosed in accordance with prescribed procedures and relates to the third party's remuneration as an employee of a public body, as an employee as defined in the *Public Service Act*, or as a member of the staff of a member of the Executive Council.

14. The following is added after section 25:

Employee relations

25.1. The head of a public body may refuse to disclose to an applicant

- (a) information relating to an ongoing workplace investigation;

- (b) information created or gathered for the purpose of a workplace investigation, regardless of whether such investigation actually took place, where the release of such information could reasonably be expected to cause harm to the applicant, a public body or a third party; and
- (c) information that contains advice given by the employee relations division of a public body for the purpose of hiring or managing an employee.

15. Section 29 is repealed and the following substituted:

Time limit for requesting review

29. (1) A request for a review of a decision of the head of a public body must be delivered in writing to the Information and Privacy Commissioner within 30 days after the person asking for the review is given notice of the decision.

Extension

(2) Upon request of the person asking for the review, and if, in the opinion of the Information and Privacy Commissioner, it is fair to do so, the Information and Privacy Commissioner may extend the time for a person to seek a review for a reasonable period of time.

16. The following is added after section 42:

Privacy impact assessment

42.1. (1) A minister shall, during the development of a program or service by a public body or the redesign of an existing program or service by a public body, submit to the Minister responsible for this Act

- (a) a privacy impact assessment for the Minister's review and comment; or
- (b) the results of a preliminary assessment showing that a privacy impact assessment of the program or service is not required.

Preliminary assessment

(2) A minister shall conduct a preliminary assessment and, where required, a privacy impact assessment in accordance with the directions of the Minister responsible for this Act.

Municipality not included

(3) A municipality is not a public body for the purposes of subsection (1).

17. Section 48 is amended by striking out the "or" the end of paragraph (u), by striking out the period at the end of paragraph (v) and replacing it with "; or" and adding the following after paragraph (v):

- (w) in accordance with prescribed procedures for the disclosure of part or all of the remuneration of an employee of a public body, an employee as defined in the *Public Service Act*, or a member of the staff of a member of the Executive Council.

18. The following is added after section 48:

Definition of consistent purposes

48.1. A use of personal information is consistent under section 43 or 48 with the purpose for which the information was collected or compiled where the use

- (a) has a reasonable and direct connection to that purpose; and
- (b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.

19. In the French version, subsection 71(1) is repealed and the following substituted:

Accès aux manuels

71. (1) Le responsable d'un organisme public rend accessible au public, sans qu'une demande d'accès ne soit nécessaire en vertu de la présente loi, les documents suivants préparés aux fins de l'interprétation d'un texte législatif ou de la gestion d'un de ses programmes ou d'une de ses activités qui touche le public ou un groupe particulier parmi le public :

- a) les manuels, guides ou directives destinés aux cadres ou aux employés de l'organisme public;
- b) les règles de fond ou exposés de politiques adoptés par l'organisme public.

20. (1) In the English version, paragraph 73(a) is amended by striking out “officers or other bodies as public bodies;” and substituting “offices, municipalities or other bodies as public bodies;”.

(2) Section 73 is amended by adding the following after paragraph (1):

- (1.1) prescribing procedures for the disclosure of part or all of the remuneration of an employee of a public body, an employee as defined in the *Public Service Act*, or a member of the staff of a member of the Executive Council;
- (1.2) defining remuneration for the purposes of this Act;

21. Each provision listed in Column 1 of Schedule A is amended by striking out the text set out in the same row of Column 2 of Schedule A and substituting the text set out in the same row of Column 3 of Schedule A.

SCHEDULE A

Provisions Amended	Text Struck Out	Text Substituted
● The French version of paragraph 3(2)(a)	"vise à compléter"	"vise à compléter et ne remplace pas les autres"
● The English version of paragraph 7(2)(a)	"and technical expertise, and"	"and technical expertise; and"
● The French version of subsection 10(2)	"le requérant requière"	"le requérant demande"
● The English version of paragraph 11(1)(e)	"translation"	"translation."
● The French version of paragraph 14(1)(a)	"politiques administratives"	"politiques"
● The French version of paragraph 14(1)(g)	"politiques administratives"	"politiques"
● The French version of paragraph 14(1)(g)	"décision de principe"	"décision relative à une politique "
● The French version of paragraph 14(2)(g)	"la prise de position"	"l'exposé de la politique"
● The English version of paragraph 17(1)(c)	"a public body;"	"a public body; and"
● The French version of subsection 23(3)	"à la vie privée d'un tiers,"	"à la vie privée d'un tiers"
● The French version of subsection 23(5)	"au sujet du requérant,"	"au sujet du requérant"
● The French version of subsection 38(3)	"en l'absence d'autres"	"sans préavis aux autres"
● The French version of subsection 46(2)	"public a dévoilé"	"public a divulgué"
● The French version of subsection 46(3)	"les renseignements qui relève"	"les renseignements qui relèvent"
● The French version of subsection 46(3)	"notification de la demande de correction relative "	"mention de la correction demandée relativement "
● The French version of paragraph 49(d)	"et les politiques administratives"	", les politiques et les formalités à suivre"
● The English version of section 49.8	"to personal information if,"	"to personal information if"
● The English version of subsection 49.9(2)	"public body is material include,"	"public body is material include"
● The English version of subsection 49.10(2)	"to the individual include,"	"to the individual include"
● The English version of subsection 49.10(4)	"must contain,"	"must contain"

• The English version of paragraph 49.10(4)(a)	"to allow the individual to,"	"to allow the individual to"
• The English version of section 49.11	"the breach of privacy if,"	"the breach of privacy if"
• The English version of section 49.12	"the public body to,"	"the public body to"
• The French version of paragraph 52(1)(b)	"en vertu de la <i>Loi sur la tutelle</i> "	
• The French version of subsection 56(5)	"dans les cas où"	
• The English version of paragraph 73(m)	"in the regulations;"	"in the regulations; and"