

**CONSOLIDATION OF ACCESS TO INFORMATION
AND PROTECTION OF PRIVACY ACT**

S.N.W.T. 1994,c.20

In force December 31, 1996, except s.4(2)
s.4(2) in force on December 31, 2007

(Current to: December 5, 2012)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

S.N.W.T. 1994,c.20,s.4(3) (as amended by S.Nu. 2003,c.31,s.2 [in force December 5, 2003])

Note: Repeal in force December 31, 2007; see s.4(3).

S.N.W.T. 1996,c.18

S.N.W.T. 1998,c.5

S.N.W.T. 1998,c.17

S.N.W.T. 1998,c.29

AS AMENDED BY STATUTES ENACTED UNDER SECTION 76.05 OF NUNAVUT ACT:

S.N.W.T. 1998,c.34

In force April 1, 1999

AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 1999,c.10

In force November 3, 1999

S.Nu. 2000,c.17

In force November 3, 2000

S.Nu. 2002,c.27

In force December 3, 2002

S.Nu. 2003,c.31

In force December 5, 2003

S.Nu. 2005,c.3,s.1

s.1 in force March 22, 2005

S.Nu. 2006,c.21,s.26

s.26 in force December 5, 2006

S.Nu. 2007,c.8,s.1

s.1 in force November 8, 2007

S.Nu. 2010,c.4,s.2

s.2 in force March 23, 2010

S.Nu. 2011,c.11,s.1

s.1 in force March 10, 2011

S.Nu. 2012,c.13

NIF

S.Nu. 2012,c.16,s.56

s.56 NIF

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT

Purposes of this Act

1. The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by

- (a) giving the public a right of access to records held by public bodies;
- (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves held by public bodies;
- (c) specifying limited exceptions to the rights of access;
- (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies; and
- (e) providing for an independent review of decisions made under this Act.

Definitions

2. In this Act,

"applicant" means a person who applies for access to a record under section 6;
(*requérant*)

"employee", in relation to a public body, includes a person retained under contract to perform services for the public body; (*employé*)

"head" means

- (a) in relation to a public body that is a department, branch or office of the Government of Nunavut, the member of the Executive Council who presides over it, and
- (b) in relation to any other public body, the person designated in the regulations as the head of the public body; (*responsable*)

"law enforcement" includes

- (a) policing, including criminal intelligence operations,
- (b) investigations that lead or could lead to the imposition of a penalty or sanction, or
- (c) proceedings that lead or could lead to the imposition of a penalty or sanction; (*exécution de la loi*)

"Minister" means the member of the Executive Council who is responsible for the administration of this Act; (*ministre*)

"Minister of Justice" means the Minister of Justice and Attorney General; (*ministre de la Justice*)

"offence" means an offence under an enactment of Nunavut or Canada; (*infraction*)

"person" includes a public body; (*personne*)

"personal information" means information about an identifiable individual, including

- (a) the individual's name, home or business address or home or business telephone number,
- (b) the individual's race, colour, national or ethnic origin or religious or political beliefs or associations,
- (c) the individual's age, sex, sexual orientation, marital status or family status,
- (d) an identifying number, symbol or other particular assigned to the individual,
- (e) the individual's fingerprints, blood type or inheritable characteristics,
- (f) information about the individual's health and health care history, including information about a physical or mental disability,
- (g) information about the individual's educational, financial, criminal or employment history,
- (h) anyone else's opinions about the individual,
- (i) the individual's personal opinions, except where they are about someone else; (*renseignements personnels*)

"public body" means

- (a) a department, branch or office of the Government of Nunavut, or
- (b) an agency, board, commission, corporation, office or other body designated in the regulations,

but does not include

- (c) the Office of the Legislative Assembly or the office of a member of the Legislative Assembly or a member of the Executive Council; (*organisme public*)

"record" means a record of 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; (*document*)

"third party" means a person other than an applicant or a public body; (*tiers*)

"trade secret" means information, including a formula, pattern, compilation, program, device, product, method, technique or process

- (a) that is used or may be used, in business or for any commercial advantage,
- (b) that derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use,

- (c) that is the subject of reasonable efforts to prevent it from becoming generally known, and
- (d) the disclosure of which would result in harm or improper benefit.
(*secret industriel*)
S.Nu. 2005,c.3,s.1(2).

Scope of the Act

- 3.** (1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:
- (a) a record in a court file, a record of a judge of the Nunavut Court of Justice or of the Court of Appeal, or a record of a justice of the peace;
 - (b) a personal note, communication or draft decision of a person who is acting in a judicial or quasi-judicial capacity;
 - (c) a record relating to a prosecution where all proceedings in respect of the prosecution have not been completed;
 - (d) a question that is to be used on an examination or test;
 - (e) material placed in Nunavut Archives by or for a person other than a public body;
 - (f) a record in a registry operated by a public body where public access to the registry is normally permitted.

Other access rights protected

(2) This Act

- (a) is in addition to and does not replace other procedures for access to government information or records;
- (b) does not in any way limit access to government information or records normally available to the public;
- (c) does not limit the information otherwise available by law to a party to legal proceedings;
- (d) does not affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents; and
- (e) does not prohibit the transfer, storage or destruction of any record in accordance with another Act or a regulation under another Act.

Government bound by Act

- (3) The Government of Nunavut is bound by this Act.
S.N.W.T. 1998,c.34,Sch.C,s.1; S.Nu. 2005,c.3,s.1(2); S.Nu. 2007,c.8,s.1(2),(3).

4. (1) Repealed, S.N.W.T. 1994,c.20,s.4(3).

Conflict with other enactment

- (2) If a provision of this Act is inconsistent with or in conflict with a provision of any other enactment, the provision of this Act prevails unless the other enactment is an Act, or is made under an Act, that expressly provides that the Act, a provision of the Act or a regulation or order made under the Act prevails despite this Act.

Transitional

(3) On December 31, 2007, subsection (1) is repealed and subsection (2) comes into force. S.N.W.T. 1998,c.29,s.2; S.Nu. 1999,c.10,s.2; S.Nu. 2000,c.17,s.2; S.Nu. 2002,c.27,s.2; S.Nu. 2003,c.31,s.2; S.Nu. 2007,c.8,s.1(4); S.N.W.T. 1994,c.20,s.4(3).

PART 1

ACCESS TO INFORMATION

DIVISION A - OBTAINING ACCESS TO RECORDS

Right of access

5. (1) A person who makes a request under section 6 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

Information excepted from disclosure

(2) The right of access to a record does not extend to information excepted from disclosure under Division B of this Part, but where that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

Fees

(3) The right of access to a record is subject to the payment of any applicable fee.

How to make an access request

6. (1) To obtain access to a record, a person must make a written request to the public body that the person believes has custody or control of the record.

Request to be detailed

(2) The request must provide enough detail to enable the public body to identify the record.

Request for copy of record

(3) The applicant may ask for a copy of the record or ask to examine the record.

Duty to assist applicants

7. (1) The head of a public body shall make every reasonable effort to assist an applicant and to respond to an applicant openly, accurately, completely and without delay.

Duty to create document

- (2) The head of a public body shall create a record for an applicant where
- (a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise; and
 - (b) creating the record would not unreasonably interfere with the operations of the public body.

Language of access

- (3) The head of a public body shall give access to a record in the Official Language of Nunavut requested by an applicant where
- (a) the record already exists in the control of the public body in that language; or
 - (b) the head of the public body considers it to be in the public interest to have a translation of the record prepared in that language.

No translation fee

- (4) An applicant shall not be required to pay a fee for the translation of a record. S.Nu. 2005,c.3,s.1(3).

Time limit for responding

- 8.** (1) The head of a public body shall respond to an applicant not later than 30 days after a request is received unless
- (a) the time limit is extended under section 11; or
 - (b) the request has been transferred under section 12 to another public body.

Effect of failure to respond

- (2) The failure of a head to respond to a request in time is to be treated as a decision to refuse access to the record.

Contents of response

- 9.** (1) Subject to subsection (2), the applicant must be told, in a response under subsection 8(1),
- (a) whether or not the applicant is entitled to access to the record or to part of the record under this Act;
 - (b) if the applicant is entitled to access, where, when and how access will be given; and
 - (c) if access to the record or to part of the record is refused
 - (i) the reasons for the refusal and the provision of this Act on which the refusal is based,
 - (ii) the name, title, office address and office telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
 - (iii) that the applicant may ask for a review under subsection 28(1).

Exception

(2) The head of a public body may refuse to confirm or deny the existence of a record

- (a) containing information described in section 20 or 21; or
- (b) containing personal information respecting a third party, where disclosure of the information would be an unreasonable invasion of the third party's personal privacy.

How access will be given

10. (1) Where an applicant is told under subsection 9(1) that access to a record will be given, the head of the public body concerned must comply with this section.

Copy of record to be provided with response

(2) Where an applicant has asked for a copy of a record, the copy must be provided with the response or the applicant must be given reasons for the delay in providing the copy if

- (a) the record, or the part of it to which access will be given, can be reasonably reproduced by the public body using its normal equipment and expertise; and
- (b) creating the copy would not unreasonably interfere with the operations of the public body.

Examination of record

(3) Where an applicant has asked to examine a record or when a copy is not being provided under subsection (2), the applicant must

- (a) be permitted to examine the record or part of the record; or
- (b) be given access in accordance with the regulations.

Information about applicant's health

(4) Despite subsections (2) and (3), access to personal information relating to an applicant's physical or mental health may be given only in a manner authorized by the regulations. S.Nu. 2010,c.4,s.2(2).

Extension of time limit for responding

11. (1) The head of a public body may extend the time for responding to a request for a reasonable period where

- (a) the applicant does not give enough detail to enable the public body to identify a requested record;
- (b) a large number of records is requested or must be searched to identify the requested record and meeting the time limit would unreasonably interfere with the operations of the public body;
- (c) more time is needed to consult with a third party or another public body before the head can decide whether or not the applicant is entitled under this Act to access to a requested record; or
- (d) a third party asks for a review under subsection 28(2).

Notifying applicant of extension

(2) Where the time for responding to a request is extended under subsection (1), the head of the public body must tell the applicant without delay

- (a) the reason for the extension;
- (b) when a response can be expected; and
- (c) that the applicant may ask for a review of the extension under subsection 28(1).

Note: On a day to be fixed by order of the Commissioner,

(1) Subsection 11(1) is amended as follows:

- (a) paragraph (c) is amended by striking out " or";
- (b) paragraph (d) is amended by striking out "." and substituting "; or"; and
- (c) by adding the following after paragraph 11(1)(d):
 - (e) a requested record exists in the control of the public body only in a language other than the Official Language of Nunavut requested by the applicant and additional time is required for translation

(2) Section 11 is amended by adding the following after subsection (2):

Document to be provided

(3) Where the time for responding to a request is extended under paragraph (1)(e), the head of the public body shall provide access to a record or a copy of a record in the original language of the record within the time limit specified under subsection 8(1).

See S.Nu. 2012,c.13,s.2,3.

Transferring request to another public body

12. (1) The head of a public body may transfer a request for access to a record and, if necessary, the record, to another public body where

- (a) the record was produced by or for the other public body;
- (b) the other public body was the first to obtain the record; or
- (c) the record is in the custody or under the control of the other public body.

Notifying applicant of transfer

(2) Where a request is transferred to another public body,

- (a) the head of the public body who transferred the request shall notify the applicant of the transfer without delay; and

- (b) the head of the public body to which the request is transferred shall respond to the applicant in accordance with section 9 not later than 30 days after the request is received by that public body unless this time limit is extended under section 11.

Note: On a day to be fixed by order of the Commissioner, the following is added after section 12:

Abandoned request

12.1. (1) A public body may, by notice to the applicant, declare a request abandoned where

- (a) the public body has given notice to an applicant seeking further information from the applicant that is necessary to process the request or requesting the applicant to pay an applicable fee; and
- (b) the applicant has failed to respond to the public body within 90 days after being contacted.

Content of notice

(2) A notice declaring a request abandoned must state that the applicant may ask for review of that decision by the Information and Privacy Commissioner.

See S.Nu. 2012,c.13,s.4.

DIVISION B - EXCEPTIONS TO DISCLOSURE

Cabinet confidences

- 13.** (1) The head of a public body shall refuse to disclose to an applicant information that would reveal a confidence of the Executive Council, including
- (a) advice, proposals, requests for directions, recommendations, analyses or policy options prepared for presentation to the Executive Council or the Financial Management Board;
 - (b) the contents of agendas, minutes or records of decision of the Executive Council or the Financial Management Board or deliberations or decisions of the Executive Council or the Financial Management Board;
 - (c) consultations among members of the Executive Council or the Financial Management Board on matters that relate to the making of government decisions or the formulation of government policy; and
 - (d) briefings to members of the Executive Council or the Financial Management Board in relation to matters that
 - (i) have been before, or are proposed to be brought before, the Executive Council or the Financial Management Board, or
 - (ii) are the subject of consultations described in paragraph (c).

15 year limit

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

Disclosure of advice from officials

14. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to reveal

- (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council;
- (b) consultations or deliberations involving
 - (i) officers or employees of a public body,
 - (ii) a member of the Executive Council, or
 - (iii) the staff of a member of the Executive Council;
- (c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Nunavut or a public body, or considerations that relate to those negotiations;
- (d) plans that relate to the management of personnel or the administration of a public body that have not yet been implemented;
- (e) the contents of draft legislation, regulations and orders;
- (f) the contents of agendas or minutes of meetings of an agency, board, commission, corporation, office or other body that is a public body; or
- (g) information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

Exceptions

(2) Subsection (1) does not apply to information that

- (a) has been in existence in a record for more than 15 years;
- (b) is a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function;
- (c) is the result of product or environmental testing carried out by or for a public body, unless the testing was done
 - (i) for a fee as a service to a person other than a public body, or
 - (ii) for the purpose of developing methods of testing or testing products for possible purchase;
- (d) is a statistical survey;
- (e) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal;
- (f) is an instruction or guideline issued to officers or employees of a public body; or

- (g) is a substantive rule or statement of policy that has been adopted by a public body for the purpose of interpreting an enactment or administering a program or activity of the public body.
S.Nu. 2005,c.3,s.1(2).

Privileged information

- 15.** The head of a public body may refuse to disclose to an applicant
- (a) information that is subject to any type of privilege available at law, including solicitor-client privilege;
 - (b) information prepared by or for an agent or lawyer of the Minister of Justice or a public body in relation to a matter involving the provision of legal services; or
 - (c) information in correspondence between an agent or lawyer of the Minister of Justice or a public body and any other person in relation to a matter involving the provision of advice or other services by the agent or lawyer.

Disclosure prejudicial to intergovernmental relations

- 16.** (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to
- (a) impair relations between the Government of Nunavut and any of the following or their agencies:
 - (i) the Government of Canada or a province or territory,
 - (ii) an aboriginal organization exercising governmental functions, including, but not limited to
 - (A) a band council, and
 - (B) an organization established to negotiate or implement, on behalf of aboriginal people, a treaty or land claim agreement or treaty with the Government of Canada,
 - (iii) a municipal or settlement council or other local authority,
 - (iv) the government of a foreign state,
 - (v) an international organization of states;
 - (b) prejudice the conduct of negotiations relating to aboriginal self-government or to a treaty or land claims agreement; or
 - (c) reveal information received, explicitly or implicitly, in confidence from a government, local authority or organization referred to in paragraph (a) or its agency.

Approval of Commissioner in Executive Council

- (2) The head of a public body shall not disclose information referred to in paragraphs (1)(a) and (b) without the approval of the Commissioner in Executive Council.

Approval of Commissioner in Executive Council and consent of other government

(2.1) The head of a public body shall not disclose information referred to in paragraph (1)(c) without the approval of the Commissioner in Executive Council and the written consent of the government, local authority, organization or agency that provided the information.

15 year limit

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

S.Nu. 2005,c.3,s.1(2),(6).

Economic and other interests of public bodies

17. (1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the economic interest of the Government of Nunavut or a public body or the ability of the Government to manage the economy, including the following:

- (a) trade secrets of the Government of Nunavut or a public body;
- (b) financial, commercial, scientific, technical or other information in which the Government of Nunavut or a public body has a proprietary interest or a right of use and that has, or is reasonably likely to have, monetary value;
- (c) information the disclosure of which could reasonably be expected to
 - (i) result in financial loss to,
 - (ii) prejudice the competitive position of, or
 - (iii) interfere with contractual or other negotiations of,the Government of Nunavut or a public body;
- (d) 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 or public body of priority of publication.

Product and environmental testing

(2) A head shall not refuse, under subsection (1), to disclose the results of product or environmental testing carried out by or for a public body, unless the testing was done

- (a) for a fee as a service to a person other than a public body; or
- (b) for the purpose of developing methods of testing or testing products for possible purchase.

S.Nu. 2005,c.3,s.1(2).

Testing procedures, tests and audits

18. The head of a public body may refuse to disclose to an applicant information relating to

- (a) testing or auditing procedures or techniques, or
- (b) details of specific tests to be given or audits to be conducted,

where disclosure could reasonably be expected to prejudice the use or results of particular tests or audits.

Disclosure harmful to the conservation of heritage sites

19. The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to result in damage to or interfere with the conservation of

- (a) fossil sites or natural sites;
- (b) sites having an anthropological or heritage value or aboriginal cultural significance; or
- (c) any rare, endangered, threatened or vulnerable form of life.

Disclosure prejudicial to law enforcement

20. (1) The head of a public body may refuse to disclose information to an applicant where there is a reasonable possibility that disclosure could

- (a) prejudice a law enforcement matter;
- (b) prejudice the defence of Canada or of any foreign state allied to or associated with Canada or harm the detection, prevention or suppression of espionage, sabotage or terrorism;
- (c) impair the effectiveness of 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;
- (e) endanger the physical health or safety of a law enforcement officer or any other person;
- (f) deprive a person of the right to a fair trial or impartial adjudication;
- (g) reveal a record that has been confiscated from a person by a peace officer in accordance with a law;
- (h) facilitate the escape from custody of an individual who is being lawfully detained;
- (i) facilitate the commission of an unlawful act or hamper the control of crime;
- (j) reveal technical information relating to weapons or potential weapons;
- (k) prejudice the security of any property or system, including a building, a vehicle, a computer system or a communications system; or
- (l) reveal information in a correctional record supplied, explicitly or implicitly, in confidence.

Disclosure exposing person to civil liability

(2) The head of a public body may refuse to disclose information to an applicant where the information

- (a) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or an individual who has been quoted or paraphrased in the record; or
- (b) is about the history, supervision or release of an individual who is under the control or supervision of a correctional authority and the disclosure could reasonably be expected to hamper the proper control or supervision of that individual.

Disclosure an offence under an Act of Canada

(3) The head of a public body shall refuse to disclose information to an applicant where the information is in a law enforcement record and the disclosure would be an offence under an Act of Canada.

Routine inspection or statistical report

(4) Subsections (1) and (2) do not apply to

- (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 have a result referred to in subsection (1), (2), or (3).

Disclosure of reasons not to prosecute

(5) After a law enforcement investigation is completed, the head of a public body shall not refuse to disclose under this section the reasons for a decision not to prosecute

- (a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim; or
- (b) to any other member of the public, where the fact of the investigation was made public.

Disclosure harmful to another individual's safety

21. (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 endanger the mental or physical health or safety of an individual other than the applicant.

Disclosure harmful to applicant's safety

(2) The head of a public body may refuse to disclose to an applicant personal information about the applicant if, in the opinion of a medical or other expert, the disclosure could reasonably be expected to result in immediate and grave danger to the applicant's mental or physical health or safety.

Confidential evaluations

22. The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled solely for the purpose of determining the applicant's suitability, eligibility or qualifications for employment or for the awarding of government contracts or other benefits when the information has been provided to the public body, explicitly or implicitly, in confidence.

Personal privacy of third party

23. (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.

Presumption of unreasonable invasion of privacy

(2) 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 was compiled and is identifiable as part of an investigation into a possible contravention of law, except to the extent that disclosure is necessary to prosecute the contravention or continue the investigation;
- (c) the personal information relates to eligibility for social assistance, student financial assistance, legal aid or other social benefits or to the determination of benefit levels;
- (d) the personal information relates to employment, occupational or educational history;
- (e) the personal information was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or credit worthiness;
- (g) the personal information consists of personal recommendations or evaluations about the third party, character references or personnel evaluations;
- (h) 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;
- (i) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation; or
- (j) the personal information indicates the third party's race, religious beliefs, colour, gender, age, ancestry or place of origin.

Consideration of relevant circumstances

(3) In determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Nunavut or a public body to public scrutiny;
- (b) the disclosure is likely to promote public health and safety or to promote 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; and
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

Circumstances where no unreasonable invasion of privacy

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

- (a) the third party has, in writing, consented to or requested the disclosure;
- (b) there are compelling circumstances affecting the health or safety of any person and notice of the disclosure is mailed to the last known address of the third party;
- (c) an Act of Nunavut or Canada authorizes or requires the disclosure;
- (d) the disclosure is for research purposes and is in accordance with section 49;
- (e) the personal information relates to the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council;
- (f) the personal information relates to expenses incurred by the third party while travelling at the expense of a public body;
- (g) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body, but not personal information supplied in support of the application for the benefit;

- (h) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body, but not personal information supplied in support of the application for the benefit or that is referred to in paragraph (2)(c); or
- (i) the disclosure reveals financial and other details of a contract to supply goods or services to a public body.

Summary of refusal information

(5) On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body shall give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.

Summary prepared by third party

(6) The head of the public body may allow the third party to prepare the summary of personal information under subsection (5). S.Nu. 2005,c.3,s.1(2).

Business interests of third party

24. (1) Subject to subsection (2), the head of a public body shall refuse to disclose to an applicant

- (a) information that would reveal trade secrets of a third party;
- (b) financial, commercial, scientific, technical or labour relations information
 - (i) obtained in confidence, explicitly or implicitly, from a third party, or
 - (ii) that is of a confidential nature and was supplied by a third party in compliance with a lawful requirement;
- (c) information the disclosure of which could reasonably be expected to
 - (i) result in undue financial loss or gain to any person,
 - (ii) prejudice the competitive position of a third party,
 - (iii) interfere with contractual or other negotiations of a third party, or
 - (iv) result in similar information not being supplied to a public body;
- (d) information about a third party obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax;
- (e) a statement of a financial account relating to a third party with respect to the provision of routine services by a public body;
- (f) a statement of financial assistance provided to a third party by a prescribed corporation or board; or
- (g) information supplied by a third party to support an application for financial assistance mentioned in paragraph (f).

Disclosure with consent or legislative authority

- (2) A head of a public body may disclose information described in subsection (1)
- (a) with the written consent of the third party to whom the information relates; or
 - (b) if an Act or regulation of Nunavut or Canada authorizes or requires the disclosure.
- S.Nu. 2005,c.3,s.1(2).

Information that is or will be available to the public

25. (1) The head of a public body may refuse to disclose to an applicant information that is otherwise available to the public or that is required to be made available within six months after the applicant's request is received, whether or not for a fee.

Notifying applicant of availability

(2) Where the head of a public body refuses to disclose information under subsection (1), the head shall inform the applicant where the information is or will be available.

DIVISION C - THIRD PARTY INTERVENTION**Notifying third party of proposed disclosure**

26. (1) Where the head of a public body is considering giving access to a record that may contain information

- (a) the disclosure of which would be an unreasonable invasion of a third party's personal privacy under section 23, or
- (b) that affects the interests of a third party under section 24,

the head shall, where reasonably possible, give written notice without delay to the third party in accordance with subsection (2).

Content of notice

- (2) The notice must
- (a) state that a request has been made for access to a record that may contain information the disclosure of which may affect the interests or invade the personal privacy of the third party;
 - (b) describe the contents of the record;
 - (c) state that the third party may, within 60 days after the notice is given, consent in writing to the disclosure or make representations to the public body explaining why the information should not be disclosed; and
 - (d) include a copy of the record or part of it containing the information in question.

Head may dispense with notice

(3) Where, in the opinion of the head of a public body, it is not reasonably possible to provide notice to a third party under subsection (1), the head may dispense with the giving of notice.

Notice of third party rights

(4) Where notice is given under subsection (1), the head of the public body must also give the applicant a notice stating that

- (a) the record requested by the applicant may contain information the disclosure of which would affect the interests or invade the personal privacy of a third party; and
- (b) the third party is being given an opportunity to make representations concerning disclosure.

Decision of head to give or refuse access

27. (1) The head of the public body shall decide whether or not to give access to the record or to part of the record not later than 90 days after notice is given under subsection 26(1), but no such decision may be made before the earlier of

- (a) 61 days after the day on which notice is given; or
- (b) the day a response is received from the third party.

Notice of decision

(2) The head of the public body shall give written notice of a decision made under subsection (1), including reasons for the decision, to the applicant and the third party.

Notice of right to request review of access grant

(3) Where the head of the public body decides to give access to the record or part of the record, the notice must state that the applicant will be given access unless the third party asks for a review under subsection 28(2) within 30 days after the day on which notice is given.

Notice of right to request review of access refusal

(4) Where the head of the public body decides not to give access to the record or part of the record, the notice must state that the applicant may ask for a review under subsection 28(1) within 30 days after the day on which notice is given.

DIVISION D - REVIEW AND APPEAL

Review by Information and Privacy Commissioner

Right of applicant to request review

28. (1) A person who makes a request to the head of a public body for access to a record or for correction of personal information may ask the Information and Privacy Commissioner to review any decision, act or failure to act of the head that relates to that request.

Right of third party to request review

(2) A third party may ask the Information and Privacy Commissioner to review a decision under section 27 to give access to a record or part of a record that affects the interests or invades the personal privacy of the third party.

Time limit for requesting review

29. 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.

Notifying others of review

30. On receiving a request for a review, the Information and Privacy Commissioner shall give a copy to the head of the public body concerned and to

- (a) the applicant, where a third party asked for the review; or
- (b) a third party whose personal privacy may be invaded by a disclosure of personal information under section 23 or whose interests may be affected by a disclosure of information under section 24, where the applicant asked for the review.

Review by Information and Privacy Commissioner

31. (1) Subject to subsection (2), the Information and Privacy Commissioner shall conduct a review and may decide all questions of fact and law arising in the course of the review.

Refusal to conduct review

(2) The Information and Privacy Commissioner may refuse to conduct a review or may discontinue a review if, in his or her opinion, the request for a review

- (a) is frivolous or vexatious;
- (b) is not made in good faith;
- (c) concerns a trivial matter; or
- (d) amounts to an abuse of the right to access.

Time limit for review

(3) Except when a review is not conducted or is discontinued under subsection (2), a review must be completed within 180 days after the receipt by the Information and Privacy Commissioner of the request for the review.

Review to be private

32. (1) A review must be conducted in private.

Opportunity to make representations

(2) The person who asked for the review, the head of the public body concerned and any other person given a copy of the request for a review under section 30 must be given an opportunity to make representations to the Information and Privacy Commissioner during the review.

No right to be present during review

(3) No one is entitled as of right to be present during a review or to have access to, or to comment on, representations made to the Information and Privacy Commissioner by any other person.

Onus at review of refusal to give information

33. (1) On a review of a decision to refuse an applicant access to all or part of a record, the onus is on the head of the public body to establish that the applicant has no right of access to the record or part.

Onus at review of refusal to give third party information

(2) On a review of a decision to refuse an applicant access to all or part of a record that contains personal information about a third party, the onus is on the applicant to establish that disclosure of the information would not be contrary to this Act or the regulations.

Onus at review of grant of third party information

(3) On a review of a decision to give an applicant access to all or part of a record containing information that relates to a third party,

- (a) in the case of personal information, the onus is on the applicant to establish that disclosure of the information would not be contrary to this Act or the regulations; and
- (b) in any other case, the onus is on the third party to establish that the applicant has no right of access under this Act to the record or the part of the record.

Powers of Information and Privacy Commissioner

34. Despite any other Act or any privilege available at law, the Information and Privacy Commissioner may, after receiving a request for a review, require the production of and examine any record to which this Act applies that is in the custody or under the control of the public body concerned. S.Nu. 2010,c.4,s.2(2).

Information and Privacy Commissioner to report

35. On completing a review, the Information and Privacy Commissioner shall

- (a) prepare a written report setting out the recommendations of the Information and Privacy Commissioner with respect to the matter and the reasons for the recommendations; and
- (b) send a copy of the report to the person who asked for the review, the head of the public body concerned and any other person given a copy of the request for a review under section 30.

Decision of head

36. Within 30 days after receiving the report of the Information and Privacy Commissioner, the head of the public body concerned shall

- (a) make a decision to follow the recommendation of the Information and Privacy Commissioner or make any other decision the head considers appropriate; and
- (b) give written notice of the decision to the Information and Privacy Commissioner, the person who asked for the review and any other person given a copy of the request for a review under section 30.

Appeal to Nunavut Court of Justice

Appeal of decision of head

37. (1) An applicant or a third party may appeal a decision made by a head of a public body under section 36 to the Nunavut Court of Justice.

Notice of appeal

(2) An applicant or third party who wishes to appeal a decision of a head shall file a notice of appeal with the Nunavut Court of Justice and serve the notice on the head within 30 days after the day the appellant receives the written notice of the decision.

Written notice to third party

(3) A head who has refused an application for access to a record or part of a record shall, as soon as is reasonably practicable after receipt of the notice of appeal, give written notice of the appeal to any third party to whom a report was sent under paragraph 35(b).

Written notice to applicant

(4) A head who has granted an application for access to a record or part of a record shall, as soon as is reasonably practicable after receipt of the notice of appeal, give written notice of the appeal to the applicant.

Parties to appeal

(5) An applicant or a third party who has been given notice of an appeal under this section may appear as a party to the appeal.

Information and Privacy Commissioner not a party

(6) The Information and Privacy Commissioner is not a party to an appeal.
S.Nu. 2005,c.3,s.1(4).

Functions of Nunavut Court of Justice on appeal

38. (1) On an appeal, the Nunavut Court of Justice shall make its own determination of the matter and may examine in private any record to which this Act applies in order to determine whether the information in the record may be withheld under this Act.

Onus on appeal

(2) Section 33 applies with such modifications as the circumstances require to proceedings on an appeal.

Precautions to avoid disclosure

(3) The Nunavut Court of Justice shall take every reasonable precaution, including, where appropriate, receiving representations without notice to others and conducting hearings in private, to avoid disclosure by the Court or any person of

(a) any information or other material if the nature of the information or material could justify a refusal by a head to give access to a record or part of a record; or

- (b) any information as to whether a record exists if the head, in refusing to give access, does not indicate whether the record exists.

Disclosure of information relating to offence

(4) The Nunavut Court of Justice may disclose to the Minister of Justice information that relates to the commission of an offence if, in the opinion of the Court, there is evidence of the commission of the offence. S.Nu. 2005,c.3,s.1(4).

Decision to give access

39. (1) Where the Nunavut Court of Justice determines that the head of a public body is required to give access to a record or part of it under this Act, the Court shall order the head to give the applicant access to the record or the part of it, subject to any conditions the Court considers appropriate.

Decision to refuse access

(2) Where the Nunavut Court of Justice determines that the head of a public body is required to refuse access to a record or part of it under this Act, the Court shall order the head not to give access to the record or the part of it. S.Nu. 2005,c.3,s.1(4).

PART 2

PROTECTION OF PRIVACY

DIVISION A - COLLECTION OF PERSONAL INFORMATION

Purpose of collection of information

- 40.** No personal information may be collected by or for a public body unless
- (a) the collection of the information is expressly authorized by an enactment;
 - (b) the information is collected for the purposes of law enforcement;
 - (c) the information relates directly to and is necessary for
 - (i) an existing program or activity of the public body, or
 - (ii) a proposed program or activity where collection of the information has been authorized by the head with the approval of the Executive Council; or
 - (d) the collection of the information for research or statistical purposes is authorized by or under the *Statistics Act*.
S.Nu. 2006,c.21,s.26(2).

Collection of information from individual concerned

- 41.** (1) A public body must, where reasonably possible, collect personal information directly from the individual the information relates to unless
- (a) another method of collection is authorized by that individual or by an enactment;
 - (b) the information may be disclosed to the public body under Division C of this Part;

- (c) the information is collected for the purpose of law enforcement;
- (d) the information is collected for the purpose of collecting a fine or a debt owed to the Government of Nunavut or a public body;
- (e) the information concerns the history, release or supervision of an individual under the control or supervision of a correctional authority;
- (f) the information is collected for the purpose of providing legal services to the Government of Nunavut or a public body;
- (g) the information
 - (i) is necessary in order to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Government of Nunavut or a public body and is collected in the course of processing an application made by or on behalf of the individual the information is about, or
 - (ii) is necessary in order to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the Government of Nunavut or a public body and is collected for that purpose;
- (h) the information is collected for the purpose of informing the Public Trustee about potential clients;
- (i) the information is collected for the purpose of enforcing a maintenance order under the *Maintenance Orders Enforcement Act*; or
- (j) the information is collected for the purpose of hiring, managing or administering personnel of the Government of Nunavut or a public body.

Notice to individual

(2) A public body that collects personal information directly from the individual the information is about shall inform the individual of

- (a) the purpose for which the information is collected,
- (b) the specific legal authority for the collection, and
- (c) the title, business address and business telephone number of an officer or employee of the public body who can answer questions about the collection,

unless the regulations provide that this subsection does not apply to that type of information.

Exception

(3) Subsections (1) and (2) do not apply if, in the opinion of the head of the public body concerned, compliance with them might result in the collection of inaccurate information or defeat the purpose or prejudice the use for which the information is collected. S.Nu. 2005,c.3,s.1(2).

Note: On a day to be fixed by order of the Commissioner, paragraph 41(1)(i) is repealed and the following is substituted:

- (i) the information is collected for the purpose of enforcing a support order under the *Family Support Orders Enforcement Act*; or

See S.Nu. 2012,c.16,s.56(2).

Protection of personal information

42. The head of a public body shall protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.

DIVISION B - USE OF PERSONAL INFORMATION

Use of personal information

43. A public body may use personal information only

- (a) for the purpose for which the information was collected or compiled, or for a use consistent with that purpose;
- (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use; or
- (c) for a purpose for which the information may be disclosed to that public body under Division C of this Part.

Duties of a public body

44. Where a public body uses an individual's personal information to make a decision that directly affects the individual, the public body must

- (a) make every reasonable effort to ensure that the information is accurate and complete; and
- (b) retain the information for at least one year after using it so that the individual has a reasonable opportunity of obtaining access to it.

Right of correction

45. (1) An individual who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information.

Record of refused correction

(2) Where a correction is not made in response to a request under subsection (1), the head of the public body shall make a note of the requested correction on or cross-referenced to the information to which it relates.

Notice to individual

(3) Within 30 days after the request is received, the head of the public body that receives the request shall give written notice to the individual that

- (a) the correction has been made; or
- (b) a note of the requested correction has been made under subsection (2).

Extension of time limit

(4) Section 11 applies with such modifications as the circumstances may require to permit the extension of the period set out in subsection (3).

Definition of "third party recipient"

46. (1) In this section "third party recipient" means a person other than a public body or an individual who requests the correction of information under subsection 45(1).

Notice to public body or third party

(2) Where a public body has disclosed personal information to another public body or a third party recipient in the 12 months before a request for correction of that information is received by the public body, the head of the public body shall notify the other public body or the third party recipient that

- (a) the personal information has been corrected; or
- (b) a note of the requested correction has been made under subsection 45(2).

Correction by public body

(3) A public body that receives a notice under subsection (2) shall make the correction or the note of the requested correction in respect of any record in its custody or control that contains the personal information.

DIVISION C - DISCLOSURE OF PERSONAL INFORMATION

Disclosure in accordance with Part 1 or this Division

47. A public body may disclose personal information only

- (a) in accordance with Part 1; or
- (b) in accordance with this Division.

When personal information may be disclosed

48. A public body may disclose personal information

- (a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose;
- (b) where the individual the information relates to has identified the information and consented, in the prescribed manner, to its disclosure;
- (c) for the purpose of enforcing a legal right that the Government of Nunavut or a public body has against any person;
- (d) for the purpose of

- (i) collecting a fine or debt owed by an individual to the Government of Nunavut or a public body, or
- (ii) making a payment owed to an individual by the Government of Nunavut or a public body;
- (e) to a public body or a law enforcement agency for law enforcement purposes;
- (f) where disclosure is by the Minister of Justice or an agent or lawyer of the Minister of Justice to persons responsible for a place of lawful detention;
- (g) for the purpose of hiring, managing or administering personnel of the Government of Nunavut or a public body;
- (h) to the Maintenance Enforcement Administrator for the purpose of enforcing a maintenance order under the *Maintenance Orders Enforcement Act* or the *Interjurisdictional Support Orders Act*;
- (i) to the Information and Privacy Commissioner, where the information is necessary for the performance of the duties of that officer;
- (j) to the Auditor General of Canada or to any other prescribed person for audit purposes;
- (k) to an officer or employee of the public body or to a member of the Executive Council, where the information is necessary for the performance of the duties of the officer or employee or the member of the Executive Council;
- (l) for use in the provision of legal services to the Government of Nunavut or a public body;
- (m) to Nunavut Archives for archival purposes;
- (n) for the purpose of complying with a subpoena or warrant issued or an order made by a court, person or body that has the authority to compel the production of information or with a rule of court that relates to the production of information;
- (o) for the purpose of supervising an individual under the control or supervision of a correctional authority;
- (p) for the purpose of complying with a law of Nunavut or Canada or with a treaty, written agreement or arrangement made under a law of Nunavut or Canada;
- (q) when necessary to protect the mental or physical health or safety of any individual;
- (r) so that the next of kin of an injured, ill or deceased individual may be contacted;
- (s) for any purpose when, in the opinion of the head,
 - (i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or
 - (ii) disclosure would clearly benefit the individual to whom the information relates;
- (t) where the information is otherwise available to the public;

- (u) for any purpose in accordance with any Act that authorizes or requires the disclosure; or
- (v) to a member of the Legislative Assembly who has been requested by the individual to whom the information relates to assist in resolving a problem.
S.Nu. 2005,c.3,s.1(2),(3); S.Nu. 2007,c.8,s.1(5).

Note: On a day to be fixed by order of the Commissioner, paragraph 48(h) is repealed and the following is substituted:

- (h) to the Manager appointed under the *Family Support Orders Enforcement Act* for the purpose of enforcing a support order under the *Family Support Orders Enforcement Act* or the *Interjurisdictional Support Orders Act*;

See S.Nu. 2012,c.16,s.56(3).

Disclosure for research

49. A public body may only disclose personal information for a research purpose, including statistical research, where

- (a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form;
- (b) any record linkage resulting from the disclosure is not harmful to the individuals the information is about and the benefits to be derived from the record linkage are clearly in the public interest;
- (c) the head of the public body has approved conditions relating to the following:
 - (i) security and confidentiality,
 - (ii) the removal or destruction of individual identifiers at the earliest reasonable time,
 - (iii) the prohibition of any subsequent use or disclosure of that information in individually identifiable form without the express authorization of that public body; and
- (d) the person to whom the information is disclosed has signed an agreement to comply with the approved conditions, this Act and the regulations and any of the public body's policies and procedures relating to the confidentiality of personal information.

Note: On a day to be fixed by order of the Commissioner, the following is added after section 49:

DIVISION D – REVIEW AND RECOMMENDATIONS

Right to request review

49.1. (1) An individual may request the Information and Privacy Commissioner to review whether a public body has collected, used or disclosed the individual's personal information in contravention of this Act.

Information and Privacy Commissioner may initiate review

(2) Where the Information and Privacy Commissioner has reason to believe that a public body has or may have collected, used or disclosed personal information in contravention of this Act, the Information and Privacy Commissioner may review the practices of the public body with respect to the collection, use and disclosure of personal information.

Notification of review

(3) On receiving a request for a review or upon initiating a review, the Information and Privacy Commissioner shall give a copy of the request or reasons for review to the head of the public body concerned.

Review by Information and Privacy Commissioner

49.2. (1) The Information and Privacy Commissioner may conduct a review under section 49.1 if he or she is of the opinion that a review is warranted in the circumstances.

Refusal to conduct review

(2) The Information and Privacy Commissioner shall refuse to conduct a review and may discontinue a review if, in his or her opinion, the request for a review

- (a) is frivolous or vexatious;
- (b) is not made in good faith; or
- (c) concerns a trivial matter.

Time limit for review

(3) Subject to subsection (2), a review must be completed within 180 days after the receipt by the Information and Privacy Commissioner of the request for the review.

Review to be private

49.3. (1) A review must be conducted in private.

Opportunity to make representations

(2) The individual who requests the review and the head of a public body concerned must be given an opportunity to make representations to the Information and Privacy Commissioner during the review.

No right to be present during review

(3) No one is entitled as of right to be present during a review or to have access to, or to comment on, representations made to the Information and Privacy Commissioner by any other person.

Powers of Information and Privacy Commissioner

49.4. Despite any other Act or any privilege available at law, the Information and Privacy Commissioner may, after receiving a request for a review under this Division, require the production of and examine any record to which this Act applies that is in the custody or under the control of the public body concerned.

Information and Privacy Commissioner to report

49.5. On completing a review, the Information and Privacy Commissioner shall

- (a) prepare a written report setting out the recommendations of the Information and Privacy Commissioner with respect to the collection, use or disclosure of the individual's personal information and the reasons for the recommendations; and
- (b) provide a copy of the report to the individual who asked for the review and the head of the public body concerned.

Decision of head

49.6. Within 90 days after receiving the report of the Information and Privacy Commissioner under section 49.5, the head of the public body concerned shall

- (a) make a decision to follow the recommendation of the Information and Privacy Commissioner or make any other decision the head considers appropriate; and
- (b) give written notice of the decision to the Information and Privacy Commissioner and the individual who requested the review under subsection 49.1(1).

DIVISION E – DATA BREACH NOTIFICATION

Definition

49.7. In this Division,

"harm" includes bodily harm, humiliation, damage to reputation, damage to a relationship, loss of an employment, business or professional opportunity, a negative effect on the credit record, damage to or loss of property, financial loss and identity theft.

Breach of Privacy

49.8. For the purposes of this Division, a breach of privacy occurs with respect to personal information if

- (a) the information is accessed and the access is not authorized under this Act;
- (b) the information is disclosed and the disclosure is not authorized under this Act; or

- (c) the information is lost and the loss may result in the information being accessed or disclosed without authority under this Act.

Public body to report to Information and Privacy Commissioner

49.9. (1) A public body that knows or has reason to believe that a breach of privacy has occurred with respect to personal information under its control shall report the breach of privacy to the Information and Privacy Commissioner in accordance with this section if the breach is material.

Material breach of privacy – factors

(2) The factors that are relevant in determining whether a breach of privacy with respect to personal information under the control of a public body is material include

- (a) the sensitivity of the personal information;
- (b) the number of individuals whose personal information is involved;
- (c) the likelihood of harm to the individuals whose personal information is involved; and
- (d) an assessment by the public body whether the cause of the breach is a systemic problem.

Time of report

(3) The report required by subsection (1) must be made as soon as reasonably possible after the public body knows or has reason to believe that the breach of privacy occurred and determines that the breach is material.

Content of report

(4) The report required by subsection (1) must describe the steps taken by the public body to comply with sections 49.10 and 49.11 and must contain such other information as may be prescribed.

Public body to notify individual

49.10. (1) A public body that knows or has reason to believe that a breach of privacy has occurred with respect to an individual's personal information under the public body's control shall notify the individual of the breach of privacy in accordance with this section if it is reasonable in the circumstances to believe that the breach of privacy creates a real risk of significant harm to the individual.

Real risk of significant harm – factors

(2) The factors that are relevant to determining whether a breach of privacy with respect to an individual's personal information creates a real risk of significant harm to the individual include

- (a) the sensitivity of the personal information; and
- (b) the probability that the personal information has been, is being or will be misused.

Time of notice

(3) The notice required by subsection (1) must be given as soon as reasonably possible after the public body knows or has reason to believe that the breach of privacy occurred and determines that the breach of privacy creates a real risk of significant harm to the individual.

Content of notice

- (4) The notice required by subsection (1) must contain
- (a) sufficient information to allow the individual to
 - (i) understand the significance to him or her of the breach of privacy, and
 - (ii) take steps, if any are possible, to reduce the risk of, or mitigate, any harm to him or her that could result from the breach of privacy;
 - (b) information describing what steps the public body has taken to reduce the risk of, or mitigate, any harm to the individual that could result from the breach of privacy; and
 - (c) such other information as may be prescribed.

Public body to notify others

49.11. A public body that notifies an individual of a breach of privacy under section 49.10 shall, at the same time, also notify a government institution, a part of a government institution or another public body of the breach of privacy if

- (a) the government institution, part of a government institution or other public body may be able to reduce the risk of, or mitigate, any harm to the individual that could result from the breach of privacy; or
- (b) a prescribed condition is satisfied.

Recommendation from Information and Privacy Commissioner to public body

49.12. If the Information and Privacy Commissioner receives a report under section 49.9 about a breach of privacy with respect to personal information under the control of a public body and determines that the breach of privacy creates a real risk of significant harm to one or more individuals to whom the information relates, the Information and Privacy Commission may recommend the public body to

- (a) take steps specified by the Information and Privacy Commission relating to notifying those individuals about the breach of privacy, if the Information and Privacy Commissioner is of the opinion that the steps taken by the public body to comply with section 49.10 were not sufficient;
- (b) take steps specified by the Information and Privacy Commissioner to limit the consequences of the breach of privacy; and

- (c) take steps specified by the Information and Privacy Commissioner to prevent the occurrence of further breaches of privacy with respect to personal information under the public body's control, including, without limitation, implementing or increasing security safeguards within the public body.

Decision of head

49.13. Within 30 days after receiving a recommendation under section 49.12, the head of the public body concerned shall

- (a) make a decision to follow the recommendation of the Information and Privacy Commissioner or make any other decision the head considers appropriate; and
- (b) give written notice of the decision to the Information and Privacy Commissioner and any individual notified under section 49.10.

Disclosure by Information and Privacy Commissioner

49.14. If the Information and Privacy Commissioner receives a report under section 49.9 about a breach of privacy with respect to personal information under the control of a public body and determines that the breach of privacy creates a real risk of significant harm to one or more individuals to whom the information relates, the Information and Privacy Commissioner may, despite section 56,

- (a) disclose the breach of privacy to the individuals in the manner that the Information and Privacy Commissioner considers appropriate, if the Information and Privacy Commissioner has given the public body a recommendation under clause 49.12(a) and the public body has not taken the steps specified in the recommendation within the times specified in the recommendation; and
- (b) disclose the breach of privacy to the public in the manner that the Information and Privacy Commissioner considers appropriate, if the Information and Privacy Commissioner is of the opinion that the disclosure is in the public interest.

See S.Nu. 2012,c.13,s.5.

PART 3

GENERAL

Fees

50. (1) The head of a public body may require an applicant who makes a request under section 6 to pay the prescribed fees for services provided.

Provision of fee estimate to applicant

(2) Where an applicant is required to pay fees for services, the public body shall give the applicant an estimate of the total fee before providing the services.

Manner of giving notice

- 51.** (1) Where this Act requires notice to be given to a person, it is to be given
- (a) by sending it to that person by prepaid mail to the last known address of that person;
 - (b) by personal service; or
 - (c) by substitutional service, where so authorized by the Information and Privacy Commissioner.

Where notice given by mail

(2) Where notice is given by prepaid mail under paragraph (1)(a), the notice is deemed to have been given on the fifteenth day after the day on which it is mailed.

Where notice given by substitutional service

(3) Where notice is given by substitutional service under paragraph (1)(c), the notice is deemed to have been given on a day provided for by the Information and Privacy Commissioner when he or she authorized the substitutional service.

S.Nu. 2000,c.17,s.3.

Exercise of rights by other persons

- 52.** (1) Any right or power conferred on an individual by this Act may be exercised
- (a) where the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;
 - (b) where a guardian or trustee has been appointed for the individual, by the guardian or trustee if the exercise of the right or power relates to the powers and duties of the guardian or trustee;
 - (c) where a power of attorney has been granted by the individual, by the attorney if the exercise of the right or power relates to the powers and duties of the attorney conferred by the power of attorney;
 - (d) where the individual is a minor, by a person who has lawful custody of the minor in circumstances where, in the opinion of the head of the public body concerned, the exercise of the right or power by that person would not constitute an unreasonable invasion of the privacy of the minor; or
 - (e) by any person with written authorization from the individual to act on the individual's behalf.

Notice to person exercising rights

(2) A notice required to be given to an individual under this Act may be given to the person entitled, under subsection (1), to exercise the individual's rights or powers.

S.N.W.T. 1998,c.17,s.2.

Power to authorize a public body to disregard requests

53. The Information and Privacy Commissioner may, at the request of the head of a public body, authorize the public body to disregard a request under section 6 that

- (a) is frivolous or vexatious;
- (b) is not made in good faith;
- (c) concerns a trivial matter;
- (d) amounts to an abuse of the right to access; or
- (e) would unreasonably interfere with the operations of the public body because of its repetitious or systematic nature.

Immunity from liability of public body or head

54. No action lies against the Government of Nunavut, a public body or the head or any officer or an employee of a public body for

- (a) the giving or withholding, in good faith, of any information under this Act or any consequences that flow from the giving or withholding of that information; or
- (b) the failure to give any notice required under this Act where reasonable care is taken to give the required notice.

S.Nu. 2005,c.3,s.1(2).

Immunity from liability of Information and Privacy Commissioner

55. (1) No action lies against the Information and Privacy Commissioner, a former Information and Privacy Commissioner or any other person who is or was employed in or engaged by the Office of the Information and Privacy Commissioner for anything done or not done in good faith under this Act.

Immunity from liability of provider of information

(2) No action lies against a person who in good faith provides information or gives evidence in a proceeding under Division D of Part 1 to the Information and Privacy Commissioner or to a person employed in or engaged by the Office of the Information and Privacy Commissioner.

Duty of confidentiality of Information and Privacy Commissioner

56. (1) The Information and Privacy Commissioner shall not disclose any information that comes to his or her knowledge in the exercise of the powers or performance of the duties or functions of the Information and Privacy Commissioner under this Act.

Duty of confidentiality of employees

(2) Subsection (1) applies, with such modifications as the circumstances may require, to persons employed in or engaged by the Office of the Information and Privacy Commissioner.

Right of disclosure

(3) Despite subsection (1), the Information and Privacy Commissioner may disclose,

- (a) in the course of a review, any matter that he or she considers necessary to disclose to facilitate the review; and

- (b) in a report prepared under this Act, any matter that he or she considers necessary to disclose to establish grounds for the findings and recommendations in the report.

Exception

(4) When making a disclosure under subsection (3), the Information and Privacy Commissioner shall not disclose

- (a) any information or other material where the nature of the information or material could justify a refusal by the head of a public body to give access to a record or part of a record; or
- (b) any information about whether a record exists where the head, in refusing to give access, has not indicated whether the record exists.

Disclosure to Minister of Justice

(5) Despite subsection (1), the Information and Privacy Commissioner may disclose to the Minister of Justice information that relates to the commission of an offence. S.Nu. 2010,c.4,s.2(2).

Non-compellability

57. The Information and Privacy Commissioner or a person employed in or engaged by the Office of the Information and Privacy Commissioner may not be compelled to give evidence in a court or in a proceeding of a judicial nature concerning any information that comes to his or her knowledge in the exercise of the powers or performance of the duties or functions of the Information and Privacy Commissioner under this Act.

Immunity from prosecution

58. No person is liable to prosecution for an offence under any enactment by reason only of that person's compliance with a requirement or recommendation of the Information and Privacy Commissioner under this Act.

Misuse of personal information an offence

59. (1) Every person who knowingly collects, uses or discloses personal information in contravention of this Act or the regulations is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding \$5,000.

Obstruction an offence

(2) Every person who wilfully

- (a) obstructs the Information and Privacy Commissioner or any other person in the exercise of the powers or performance of the duties or functions of the Information and Privacy Commissioner or other person under this Act,
- (b) fails to comply with any lawful requirement of the Information and Privacy Commissioner or any other person under this Act, or
- (c) makes any false statement to, or misleads or attempts to mislead, the Information and Privacy Commissioner or any other person in

the exercise of the powers or performance of the duties or functions of the Information and Privacy Commissioner or other person under this Act,
is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding \$5,000.

PART 4

ADMINISTRATION

Definition of "Committee"

60. In this Part, "Committee" means one of the following designated by the Legislative Assembly to carry out the duties and functions of the Committee under this Part:

- (a) the Speaker;
- (b) the Management and Services Board;
- (c) a Standing Committee.

DIVISION A - INFORMATION AND PRIVACY COMMISSIONER

Appointment of Information and Privacy Commissioner

61. (1) The Commissioner, on the recommendation of the Legislative Assembly, shall appoint an Information and Privacy Commissioner to carry out the duties and functions set out in this Act and shall undertake other duties and functions in addition as required by other legislation.

Term of office

(2) Subject to section 62, the Information and Privacy Commissioner holds office during good behavior for a term of five years.

Transitional

(2.1) Despite subsection (2), the term of office of an Information and Privacy Commissioner appointed before March 31, 1999, expires on March 31, 1999.

Continuation after expiry of term

(3) A person holding office as Information and Privacy Commissioner continues to hold office after the expiry of his or her term of office until he or she is reappointed, a successor is appointed or a period of six months has expired, whichever first occurs.

Reappointment

(4) A person may be reappointed as Information and Privacy Commissioner. S.N.W.T. 1996,c.18,s.2; S.Nu. 2006,c.21,s.26(3); S.Nu. 2010,c.4,s.2(2).

Resignation

62. (1) The Information and Privacy Commissioner may resign at any time by notifying the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from Nunavut, by notifying the Clerk of the Legislative Assembly.

Removal for cause

(2) The Commissioner, on the recommendation of the Legislative Assembly, shall, for cause or incapacity, remove the Information and Privacy Commissioner from office or suspend the Information and Privacy Commissioner.

Suspension

(3) If the Legislative Assembly is not sitting, the Commissioner, on the recommendation of the Committee, may suspend the Information and Privacy Commissioner for cause or incapacity. S.Nu. 2005,c.3,s.1(3).

Acting Information and Privacy Commissioner

63. (1) The Commissioner, on the recommendation of the Committee, may appoint an acting Information and Privacy Commissioner where

- (a) the Information and Privacy Commissioner is temporarily absent because of illness or for another reason;
- (b) the office of Information and Privacy Commissioner is or becomes vacant when the Legislative Assembly is not sitting;
- (c) the Information and Privacy Commissioner is suspended when the Legislative Assembly is not sitting; or
- (d) the Information and Privacy Commissioner is removed or suspended or the office of the Information and Privacy Commissioner becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Assembly under subsection 61(1) before the end of the session.

Term of acting Information and Privacy Commissioner

(2) An acting Information and Privacy Commissioner holds office until

- (a) a person is appointed under subsection 61(1),
- (b) the suspension of the Information and Privacy Commissioner ends, or
- (c) the Information and Privacy Commissioner returns to office after a temporary absence,

whichever is the case.

Oath

64. Before undertaking the duties of office, the Information and Privacy Commissioner shall take an oath, before either the Speaker or Clerk of the Legislative Assembly, to faithfully and impartially perform the duties of the office and not to disclose any information received by the Office of the Information and Privacy Commissioner under this Act except in accordance with this Act.

Engaging services

65. (1) The Information and Privacy Commissioner may employ or engage the services of any persons necessary to assist in carrying out the duties and functions of the Information and Privacy Commissioner.

(2) **Repealed, S.N.W.T. 1996,c.18,s.3.**

Oath

(3) A person employed in or engaged by the Office of the Information and Privacy Commissioner shall take an oath administered by the Information and Privacy Commissioner not to disclose any information received by that person under this Act except in accordance with this Act. S.N.W.T. 1996,c.18,s.3.

Delegation by Information and Privacy Commissioner

66. (1) The Information and Privacy Commissioner may delegate to any person any power, duty or function of the Information and Privacy Commissioner under this Act except

- (a) the power to delegate under this section;
- (b) the power to examine information described in section 20; and
- (c) the powers, duties and functions specified in section 31, paragraph 51(c) and section 53.

Delegation in writing

(2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the Information and Privacy Commissioner considers appropriate.

General powers of Information and Privacy Commissioner

67. The Information and Privacy Commissioner may

- (a) engage in or commission research into matters affecting the carrying out of the purposes of this Act;
- (b) receive representations about the operation of this Act; and
- (c) offer comment on the implications for privacy protection of proposed legislative schemes or government programs.

Annual report

68. The Information and Privacy Commissioner shall, by July 1 in each year, submit to the Legislative Assembly an assessment of the effectiveness of this Act and a report on the activities of the Information and Privacy Commissioner under this Act during the previous year, including information concerning any instances where recommendations made by the Information and Privacy Commissioner after a review have not been followed.

DIVISION B - OTHER MATTERS

Authorization by head

69. (1) The head of a public body may authorize any person to exercise a power or perform a duty or function of the head under this Act except the power to authorize another person to exercise any of the powers or perform any of the duties or functions of the head under this Act.

Content of authorization

(2) An authorization under subsection (1) must be in writing and may contain any limitations, restrictions, conditions or requirements that the head considers necessary.

Interpretation

(3) A reference to the head of a public body in this Act or the regulations includes a person authorized by a head to exercise a power or perform a duty of the head.
S.Nu. 2005,c.3,s.1(9).

Directory of public bodies and records

70. (1) The Minister shall produce, and update as reasonably required, a directory containing

- (a) a list of all public bodies; and
- (b) **repealed, S.N.W.T. 1996,c.18,s.4;**
- (c) the title and address of the appropriate person for each public body to whom requests for access to records should be sent or delivered.

Availability of directories

(2) A copy of the directory must be made available at any place that the Minister considers appropriate. S.N.W.T. 1996,c.18,s.4.

Access to policy manuals

71. (1) The head of a public body shall make available to the public, without a request for access under this Act,

- (a) manuals, instructions or guidelines issued to the officers or employees of the public body, and
- (b) substantive rules or policy statements adopted by the public body,

for the purpose of interpreting an enactment or administering a program or activity that affects the public or a specific group of the public.

Information excluded from manuals

(2) The head of a public body may delete from a record made available under this section any information he or she would be entitled to refuse to disclose to an applicant.

Statement of deletion

(3) Where information is deleted, the record must include a note stating

- (a) that information has been deleted;

- (b) the nature of the deleted information; and
- (c) the reason for the deletion.

Copy fee

(4) A person may obtain a copy of a record under this section on paying any required fee.

Records available without request

72. (1) The head of a public body may direct that categories of records that are in the custody or under the control of the public body and that do not contain personal information be made available to the public, on demand, without a request for access under this Act.

Copy fee

(2) A person may obtain a copy of an available record on paying any required fee.

Regulations

73. The Commissioner in Executive Council may make regulations

- (a) designating agencies, boards, commissions, corporations, officers or other bodies as public bodies;
- (b) designating the head of a public body that is not a department, branch or office of the Government of Nunavut;
- (c) prescribing procedures to be followed in making, transferring and responding to requests under this Act;
- (d) respecting fees to be paid under this Act and providing for circumstances when fees may be waived in whole or in part;
- (e) authorizing the disclosure of information relating to the mental or physical health of individuals to medical or other experts to determine, for the purposes of section 21, where disclosure of that information could reasonably be expected to threaten the mental or physical health or safety of any individual;
- (f) prescribing procedures to be followed or restrictions to be applied with respect to the disclosure and examination of information referred to in paragraph (e);
- (g) prescribing special procedures for giving individuals access to personal information about their physical or mental health and regulating the way in which that access is given;
- (h) exempting any information or category of information from the application of subsection 41(2);
- (i) prescribing ways in which an individual may give consent;
- (j) prescribing persons to whom personal information may be disclosed for audit purposes under paragraph 48(j);
- (k) respecting any matter that is to be included in a notice required by this Act;
- (l) prescribing forms for the purposes of this Act;

- (m) prescribing any other matter or thing required or authorized by this Act to be prescribed in the regulations; and
- (n) respecting any other matter or thing that the Commissioner in Executive Council considers necessary to carry out the intent of this Act.
S.Nu. 2005,c.3,s.1(2).

Note: On a day to be fixed by order of the Commissioner, paragraph 73(k) is amended by adding "or report" after "notice".

See S.Nu. 2012,c.13,s.6.

Coming into force

74. This Act, except subsection 4(2), comes into force on a day or days not later than December 31, 1996, to be fixed by order of the Commissioner.