PRIVACY POLICY

CLARENVILLE AREA CHAMBER OF COMMERCE

1.0 Background

Access and privacy legislation is based on two fundamental rights of people:

- the members/retailers/customer's right to access information about themselves that is held by the employees at the Clarenville Area Chamber of Commerce office Clarenville.
- the right to privacy for personal information collected, stored, used and disclosed by the Clarenville Area Chamber of Commerce employees.

The right to privacy for personal information is based on privacy protection measures which are also referred to as fair information practices. The Federal and Provincial Government Privacy Act controls the way in which an organization, agency, or group may collect, use and disclose personal information about individuals. They also control the way in which personal information is kept, disposed of, kept accurate, and kept secure. A client has a right to access his/her own personal information, subject to limited and specific exceptions. As well, a client has the right to request corrections to personal information about themselves that is held by employees of the Clarenville Area Chamber of Commerce.

2.0 Purpose

The purpose of this Privacy Policy is to make Clarenville Area Chamber of Commerce employees more accountable to the members/retailers/customers and to protect their personal privacy.

2.1 The employees will ensure the protection of their members/retailers/customers and the members/retailers/customers personal information by:

(a) giving the members/retailers/customers a right to access their records/information
(b) giving members/retailers/customers a right of access to, and a right to request correction of, personal information about themselves
(c) specifying limited exceptions to the right of access
(d) preventing the unauthorized collection, use or disclosure of personal information by public bodies
(e) providing for an independent review of decisions made by public bodies under this Policy

2.2 This Policy does not replace other procedures for access to information or limit access to information that is not personal information and is available to the public.

3.0 Definition of Record

A record for the purpose of this Privacy Policy includes a copy of a record, a draft and other working material, information recorded or stored by electronic means and any other "record of information in any form" that is in the custody or under the control of an employee of the Clarenville Area Chamber of Commerce.

3.1 The Privacy Policy applies to all correspondence, reports and other documents and recorded information received by Clarenville Area Chamber of Commerce employees from outside organizations or individuals, as well as those generated by any other staff of Clarenville Area Chamber of Commerce in the course of their duties.

3.2 For a record to fall under the Privacy Policy, the Clarenville Area Chamber of Commerce need only have either "custody" or "control" of the record. In determining whether Clarenville Area Chamber of Commerce has custody or control, it is necessary to consider all aspects of the creation, maintenance and use of the record.

In most cases, the term custody for the purpose of the Policy means having physical possession of a record. That is, the record whether in hard copy or electronic copy will be kept in the offices operated by Clarenville Area Chamber of Commerce.

4.0 Procedures Not Affected by the Policy

This policy will not replace existing procedures for providing the public with access to records or information. The underlying principles encourage routine disclosure wherever possible.

This policy is in addition to existing procedures for access to records or information normally available to the public, including a requirement to pay fees. The policy does not prohibit the transfer, storage or destruction of a record in accordance with the Federal or Provincial Privacy Act. It does not limit the information otherwise available by law to a party in a legal proceeding, nor does it affect the power of a court or tribunal to compel a witness to testify or to compel the production of a document.

This policy allows the members/retailers/customers served under Clarenville Area Chamber of Commerce's Office to access any information or records pertaining to them if the need arises.

4.1 Transfer of Records

This policy allows the employees served under Clarenville Area Chamber of Commerce Office in Clarenville to transfer client information or records upon request to the following:

- federal government departments
- provincial government departments
- Members of the House of Assembly
- Members of Parliament
- family members
- other_____

4.2 Destruction of Records

This policy allows the employees served under Clarenville Area Chamber of Commerce's Office to destroy members/retailers/customers information and/or records under the following reasons:

- if the members/retailers/customers make a permanent move outside the province
- if the members/retailers/customers make a request to have the files transferred to another firm
- if the members/retailers/customers are deceased

4.3 Legal Proceedings

This policy does not limit the information and records otherwise available by law to a party of legal proceedings.

"Legal proceedings" include all proceedings authorized or sanctioned by law, and brought or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of a remedy. Civil court actions, a prosecution in a criminal court and proceedings before a quasi-judicial tribunal such as the Labour Relations Board are examples of "legal proceedings".

Where a public body is required by the rules of court or the rules of a quasi-judicial tribunal to produce records, the exceptions to access in this policy and the provisions restricting disclosure of personal information do not apply.

4.4 Conflict with other Privacy Acts

Where there is a conflict between Clarenville Area Chamber of Commerce's Privacy Policy and the Federal and/or Provincial Government's Privacy Policy, the Federal and/or Provincial Government's Privacy Policy will prevail. This applies in situations where the Clarenville Area Chamber of Commerce's Privacy Policy prohibits or restricts access to information or provides a right of access to information.

5.0 Administration of the Privacy Policy

The Policy establishes a uniform set of administrative requirements which must be undertaken by Clarenville Area Chamber of Commerce's employees.

5.1 Head of the Privacy Policy

The President and/or the Board of Directors of Clarenville Area Chamber of Commerce will be the designate as the head of the privacy policy. The policy gives the President and/ or Clarenville Area Chamber of Commerce the responsibility for all decisions and actions of the Firm.

5.2 Access and Privacy Coordinator

The Office Manager of the Clarenville Area Chamber of Commerce will be referred to as the Access and Privacy Coordinator and will be responsible for management of access request under the privacy policy and is the focal point of access to information and protection of privacy within the Firm. It is important to note that the privacy policy places a legal obligation on the Firm to assist an applicant in an open and timely manner.

The employees of the Firm shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.

While the responsibilities of the Access and Privacy Coordinators will vary somewhat, depending on the degree of centralization of the access to information and protection of privacy functions within the organizations, the following is a general list of duties:

- ensure that members/retailers/customers and potential members/retailers/ customers are assisted in various ways, including explaining the privacy policy, helping them to narrow their requests, directing them to other sources of information, bearing in mind at all times the statutory duty to assist a members/ retailers/customer.
- assign request to program areas
- monitor and track the processing of requests
- ensure time limits and notification requirements are met
- contact third parties if third party's notification is required
- estimate, calculate and collect fees
- review preliminary access recommendations from program areas
- consult with legal counsel, as required
- develop responses to access requests
- coordinate the association's dealings, with input and guidance from the chairperson of the association or other senior officials, with the Commissioner's Offices during complaint investigations
- prepare statistical reports for the association and the Access to Information and Privacy Policy Office (ATIPP) in the Department of Justice
- identify training needs of the staff
- liaise with the ATIPP Office, Department of Justice

5.3 Exercising Rights on Behalf of Another

A right or power of an individual given in this Policy may be exercised:

- by a person with written authorization from the individual to act on the individual's behalf
- by a court appointed guardian of a mentally disabled person, where the exercise of the right or power relates to the powers and duties of the guardian
- by an attorney acting under a power of attorney, where the exercise of the right or power relates to the powers and duties conferred by the power of attorney

- by the parent or guardian of a minor where, in the opinion of the head of the public body concerned, the exercise of the right or power by the parent or guardian would not constitute an unreasonable invasion of the minor's privacy
- where the individual is deceased, by the individual's personal representative, where the exercise of the right or power relates to the administration of the individuals' estate.

It is important to ensure that a person claiming authority to act on behalf of another is legally entitled to do so, particularly where personal information or privacy is involved. Where there are any questions or doubts about the existence, or the extent, of such authority, legal counsel should be contacted.

- **Paragraph 65(a) - Written authorization from the individual**
  An authorization under paragraph 65(a) must be in writing and signed, and should be dated. The authorization should clearly set out the extent of the authority being granted.

- **Paragraph 65(b) - Court appointed guardian**
  A court appointed guardian of a mentally disabled person can exercise a right or power under the Act only if it relates to the powers and duties of the guardian.

- **Paragraph 65(c) - Attorney under a power of attorney**
  Where an individual gives authority to exercise rights on his or her behalf in a power of attorney, the power of attorney document will set the limits on that authority. The attorney can exercise a right or power under the Act only if it relates to the powers and duties conferred by the power of attorney document.

- **Paragraph 65(d) - Parent or guardian of a minor**
  A parent or legal guardian of a minor (an individual under 19 years of age) does not automatically have authority to exercise rights or powers on behalf of his or her minor child or ward under the Act. The President/Board of Directors and/or Office Manager of Clarenville Area Chamber of Commerce concerned must be satisfied that the exercise of the right or power by the parent or guardian would not constitute an unreasonable invasion of the minor's privacy. This leaves discretion in the hands of Clarenville Area Chamber of Commerce to ensure the minor's privacy rights are protected in appropriate circumstances.

  In exercising this discretion, the President/Board of Directors and/or Office Manager of Clarenville Area Chamber of Commerce should ask the parent or guardian to provide supporting documentation or written evidence that he or she is legal custodian of the child, namely a copy of any court order or legal instrument relating to the custody of the child, if applicable, or where no such order or agreement exists, written information as to the current residence and custody of the child. In other words, Clarenville Area Chamber of Commerce must be satisfied

that the applicant is the legal guardian of the child before allowing the applicant to exercise a right or power on behalf of the child.

- **Paragraph 65(e) - Personal representative of a deceased individual**
  The personal representative referred to in paragraph 65(e) is the executor named in the will of the deceased individual or, where there is no will, the administrator appointed by a court to administer the estate of the deceased individual.

5.4 Giving Notice under the Act

A variety of notices and documents are required to be given under the Act. For example:

- a fee estimates under subsection 68(2)
- notice of extension of time for responding to an access request under subsection 16(2)
- notice of transfer of request under subsection 17(2)
- notice of the decision of the President/Board of Directors (or the designate) of Clarenville Area Chamber of Commerce respecting access under subsection 12(1)
- notices to third parties respecting access under section 28

Notices given to a person under the Act should be given:

- by sending it to that person by prepaid mail to the person's last known address
- by personal service
- by electronic transmission (email) or telephone transmission (fax), or
- by another means authorized by the person receiving the notice

Except where an appeal to court is involved, the choice of how to give notice or send a document under the Act is usually determined by Clarenville Area Chamber of Commerce and will depend on the circumstances. Normally, notices or documents will be sent by mail, email or fax. Clarenville Area Chamber of Commerce will assess the circumstances and choose the most effective and economical means of giving notice or providing a document.

5.5 Protection from Liability and Offences

Under Section 71 of the Act, Clarenville Area Chamber of Commerce and the officials involved in the administration of the Act are protected from liability for damages for disclosing or withholding information where Clarenville Area Chamber of Commerce has acted in good faith or failing to give a required notice where Clarenville Area Chamber of Commerce took reasonable care in giving notice.

> 71. An action does not lie against the government of the province, a public body, the head of a public body, an elected official or appointed official of a local public body or a person acting for or under the direction of the head of a public body for damages resulting from
>
> (a) the disclosure of or a failure to disclose, in good faith, a record or part of a record or information under this Act or a consequence of that disclosure or failure to disclose; or
>
> (b) The failure to give notice required by this Act where reasonable care is taken to ensure that notices are given.

"Liabilities for damages" means civil liability to pay compensation or make reparation to someone who has suffered harm or loss.

"Good faith" means honest belief and absence of malice.

"Reasonable care" in this context means taking steps that are suitable in the circumstances.

72.	A person who willfully
	(a) discloses personal information contrary to Part IV;
	(b) makes a false statement to, or misleads or attempts to mislead the commissioner or another person performing duties or exercising powers under this Act;
	(c) obstructs the commissioner or another person performing duties or exercising powers under this Act; or
	(d) destroys a record or erases information in a record that is subject to this Act with the intent to evade a request for access to records, is guilty of an offence and liable, on summary conviction, to a fine of not more than $5,000.00 or imprisonment for a term not exceeding 6 months, or both.

"Willfully" means intentionally or deliberately.

6.0 Access Request Management

This section outlines the requirements for providing access to records in response to an application under Part II of the Act. Forms and information provided in the appendices will be used by the Access and Privacy Coordinator to manage access requests.

6.1 Right of Access

The Act establishes a right of access to a record or part of a record in the custody or under the control of Clarenville Area Chamber of Commerce. However, certain types of information are excluded and this right of access does not extend to:

- those limited types of records excluded from the Act under paragraphs 5(1)(a) to 5(1)(k).
- records excluded by the provisions of another Act
- information in a record which falls within an exception to disclosure in sections 18 - 30 of the Act

7.(1)	A person who makes a request under section 8 has a right of access to a record in the custody or under the control of the public body, including a record containing personal information about the applicant.
7.(2)	The right of access to a record does not extend to information exempted from disclosure under this Act, but if it is reasonable to sever that information from the record, an applicant has a right of access to the remainder of the record.
7.(3)	The right of access to a record is subject to the payment of a fee required under section 68.

The right of access is subject to the payment of fees as required by the Schedule of Fees set by the Minister of Justice. (See Appendices)

This right of access under the Act is not restricted by residency or citizenship and applies to businesses and other organizations, as well as to individuals.

6.2 Duty to Assist

Clarenville Area Chamber of Commerce will respond quickly, accurately and fully to applicants and to help them as reasonable and extent as possible.

The President and/or Board of Directors of Clarenville Area Chamber of Commerce shall make every reasonable effort to assist the client in making a request and to respond without delay to the client in an open, accurate and complete manner.

The duty to assist the applicant is an important, underlying provision of the Act. It is a statutory duty throughout the request process, but it is critical during the client's initial contact with Clarenville Area Chamber of Commerce. Clarenville Area Chamber of Commerce through its Access and Privacy Coordinator shall attempt to develop a working relationship with the members/retailers/customers in order to better understand the client's wishes or needs, and to ensure that he or she understands the process.

Both the members/retailers/customers and Clarenville Area Chamber of Commerce, will benefit from a cooperative, respectful relationship.

6.3 Applications

To apply for access to a record under the Act, members/retailers/customers must complete an application in the prescribed form. The members/retailers/customers must provide enough detail to enable an experienced employee of Clarenville Area Chamber of Commerce to identify the record.

The members/retailers/customers must submit the application form to Clarenville Area Chamber of Commerce that the members/retailers/customers believe has custody or control of the record being requested. Where practicable, the application should be submitted to the Access and Privacy Coordinator at the office of Clarenville Area Chamber of Commerce. Should the members/retailers/customers send an application to Clarenville Area Chamber of Commerce, it will be accepted, date stamped and forwarded immediately to the Access and Privacy Coordinator. If possible, it will be faxed to the Coordinator right away and the original sent by mail.

Application forms will be available in the Clarenville Area Chamber of Commerce office from the Access and Privacy Coordinator. The Office Manager will maintain a sufficient supply in the appropriate offices. The front-line staff should know where the forms are located and the name and address of the Access and Privacy Coordinator, which should be provided to the public along with the application form.

If a member/retailer/customer sends an access request in a format other than the application form, the Access and Privacy Coordinator will immediately fax or mail an application form to the person or instruct them how to obtain an application form to the person or instruct them how to obtain an application form electronically. The Coordinator will process the request so long as all the information required to locate the records being sought is provided and the appropriate fee is attached. This will be in keeping with the duty to assist in section 9 of the Act.

If Clarenville Area Chamber of Commerce considers that verification of the members/retailers/customer's identity or that of a third party is necessary in order to respond to the application, Clarenville Area Chamber of Commerce may at any time request that the member/retailer/customer provide suitable identification.

6.4 Receiving a Request

On the day an access request is received, the Access and Privacy Coordinator or whichever employee first receives the application, must date stamp the application. The Access and Privacy Coordinator will then record the application in the access request tracking log manual.

Access and Privacy Coordinator must advise the Federal or Provincial Government of each request as soon as it is received. The Access and Privacy Coordinator will fax a copy of the request to the government department if they request a copy for their files.

On the same day, or as soon after as possible, the Coordinator should review the request to determine:

- whether the application is understandable and complete
- whether it has been sent to the appropriate place
- whether a formal application under the Act is necessary in order for the member/ retailer/customer to obtain the information
- whether notification to a third party may be required
    - If the request is unclear, provides insufficient information, or is overly broad, the Access and Privacy Coordinator should contact the client as quickly as possible (preferably by telephone, fax, or email) to clarify his or her information needs. Vague or overly general applications are generally the results of a lack of understanding of the functions of Clarenville Area Chamber of Commerce, its records or how to best articulate the request. If, despite the Access and Privacy Coordinator's best efforts to clarify the request with the member/retailer/customer there is still some confusion, the Act enables the President and/or Board of Directors of Clarenville Area Chamber of Commerce to extend the time for responding to a request for up to an additional 30 days if the client does not give enough details to enable Clarenville Area Chamber of Commerce to identify a requested record.
    - If the request should have been sent to another public body, the Coordinator should transfer the application as soon as possible, but no later than 7 days after receipt, to that other public body.

- If the information is available through routine channels, the Coordinator should notify the member/retailer/customer immediately and advise him or her of the normal process. In most cases, Clarenville Area Chamber of Commerce will simply provide the information or direct the members/retailers/customers to the appropriate office where the information may be obtained. The Coordinator should ensure that the members/retailers/customers understand what is required or who to contact for further information and should then confirm that the members/retailers/customers wish to withdraw the application.

6.5 Acknowledging Receipt of Request

When a request is received by Clarenville Area Chamber of Commerce and the Access and Privacy Coordinator has determined that the records sought are under the custody and control of Clarenville Area Chamber of Commerce, the Coordinator must send a letter to the members/retailers/customers acknowledging receipt of the access request. The acknowledgment of receipt letter outlines the conditions under which the 30-day time limit may be extended and the policy regarding fee estimates.

6.6 Searching for the Records

To respond to members/retailers/customer's applications in an efficient and timely manner, Clarenville Area Chamber of Commerce must be able to locate and retrieve the requested records quickly. The requested records will be in kept at the Clarenville Office.

After the requested records have been located, the next step usually is to make photocopies of the requested records and to prepare a list of them. At least two copies of the records will be required: one copy for the member/retailer/customer and one copy for the Government Department. The original records will then be returned to their filing location outside the office of Clarenville Area Chamber of Commerce.

For requests involving large volumes of material, substantial photocopying may be required. For this reason, the Access and Privacy Coordinator will work with the members/retailers/customers to narrow or clarify the scope of the request and, subsequently, the number of materials to be searched and copied.

Each page of the records should be numbered consecutively and a list of all records prepared. The Access and Privacy Coordinator will develop a system best suited to his/her needs and the needs of Clarenville Area Chamber of Commerce. Should the Provincial Commissioner be required to undertake an investigation, then careful and thorough documentation at this stage will be especially helpful to the Access and Privacy Coordinator.

6.7 Preliminary Assessment of the Request

After the nature and extent of the application have been considered (including any necessary discussion with the member/retailer/customer) and the records have been located and reviewed,

the Coordinator should make a preliminary assessment. The following issues need to be addressed before proceeding:

- does it appear that all relevant records have been located and do they appear to satisfy the application?
- can the records, in whole or in part, be released immediately without line-by-line review
- do the records contain third party business information that may require third party notification?
- is a time extension necessary because the application is vague, because there is a large volume of records to be searched and a response within 30 days would unreasonably interfere with operations, or because third party notification is required?
- does it appear likely that search and preparation will require more than two hours and the preparation of an Estimate of Costs?

6.8 Review of the Records

Once the preliminary assessment has been completed and any issues resolved, the Access and Privacy Coordinator will review the information in the requested records line-by-line. A line-by-line review is essential to comply with the important principle of severability set out in the Act, which grants the member/retailer/customer a right of access to the remainder of a record after any information excerpted from disclosure. A careful review of the information contained in a record is required in order to determine whether or not an exception to disclosure applies. It is usually not possible to make this determination merely on the basis of the title, type, classification or format of a record.

More than one exception to disclosure may apply to information in a record. The reviewer should note all relevant exceptions. On a file copy of the record, the reviewer should mark the information in the record that he or she feels is excerpted from disclosure.

It is recommended that the reviewer prepare an Access Request Review Summary incorporating the following elements:

Request #			Name of Reviewing Officer:			
Doc #	No. of Pages	Date	Description	Exceptions	Comments	Third Party Notice

Thorough documentation at this stage will be beneficial for several reasons:

- in discussion with legal counsel
- in the final decision-making stage
- in explaining decisions to the Information and Privacy Commissioner if a complaint is made.
- in preparing affidavit evidence for court in the event of an appeal respecting access

6.9 Internal Consultations

An examination of the request and a thorough review of the records will often require internal consultations.

When Clarenville Area Chamber of Commerce receives a request that deals with records originating in another public body or deals with matters in which another public body has a direct interest, we will consult with that public body. This will ensure that all relevant factors are taken into consideration when deciding whether or not to disclose records.

If the records being sought may contain cabinet confidences, then Clarenville Area Chamber of Commerce must consult Cabinet Secretariat before releasing any records or information. Clarenville Area Chamber of Commerce must obtain sign-off from Cabinet Secretariat before the President and/or Board of Directors of Clarenville Area Chamber of Commerce responds to an access request.

If the records being sought may contain information that may relate to intergovernmental relations or negotiations, then Clarenville Area Chamber of Commerce must consult intergovernmental Affairs before releasing any records or information.

If Clarenville Area Chamber of Commerce requires legal advice or interpretation, then they will consult with their solicitor.

The Access and Privacy Coordinator of Clarenville Area Chamber of Commerce will incorporate these consultations into their ongoing review of the records.

6.10 Severing

Where part of the information in a requested record falls within an exception to disclosure, but other information in the record does not, the President and/or Board of Directors is required to give the members/retailers/customers access to as much of the record as can reasonably be provided without releasing the information which is excerpted from disclosure. The information which is excerpted from disclosure is “severed” from the remainder of the record and withheld from the members/retailers/customers.

Severing will be done on copies only; the original record will not be altered or defaced.

Generally, the smallest unit of information to be disclosed after severing is a sentence. But even where only a sentence remains, some information, such as a name, might be removed and the remainder released.

How to Sever
· using removable tape or a black marker, cover the information which is excerpted from disclosure on a photocopy of the record

- write the numbers of the sections, subsections and paragraphs of the applicable exception(s) on top of the tape or in the margin beside the severance. Remember: use all exceptions that apply
- when one or more entire pages have been excepted from disclosure, indicate the number of pages severed and the number of the section, subsection and paragraph of the applicable exception or exceptions to disclosure
- a photocopy of this severed version is the one which will be provided to the applicant in the final response to the request for access, either to examine on site or, if requested by the applicant and subject to any applicable fees, for the members/retailers/customers to take away. If a copy of the record is provided to the applicant, an exact copy of this version should be kept on the file.

6.11 Responding to a Request

The Access and Privacy Coordinator, as the official delegated by the President and/or Board of Directors of Clarenville Area Chamber of Commerce to respond to a request, is the point of contact for the members/retailers/customers in all correspondence, which may include notices under the Act, emails clarifying request, etc. However, it is strongly recommended that the President and/or Board of Directors of Clarenville Area Chamber of Commerce provide the final written response, in which the member/retailer/customer is granted or denied access, as per section 12.

12.(1) In a response under section 11, the head of the public body shall inform the applicant:

(a) whether access to the record or part of the record is granted or refused

(b) if access to the record or part of the record is granted, where, when and how access will be given; and

(c) if access to the record or 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, business address and business 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 appeal the refusal to the president/owner or ask for a review of the refusal by the Access and Privacy Coordinator, and advise the applicant of the applicable time limits and how to pursue an appeal or review.

- When full disclosure is provided:

  Access is provided if the record falls within the scope of the Act, if none of the information in the record falls under any mandatory exception to disclosure, and if none of the information in the record falls under a discretionary exception, or it does fall under a discretionary exception but the chairperson of Clarenville Area Chamber of Commerce has decided that it may be released.

The response must inform the members/retailers/customers where, when and how access will be given.

· When access is denied:

Access is denied to all or part of a record if the record falls outside the scope of the Act; if the information sought is publicly available or is going to be published within 45 days; if some or all of the information in the record falls within a mandatory exception to disclosure, or if some or all of the information in the record falls within a discretionary exception to disclosure and the President and/or Board of Directors has decided to deny access.

The response must provide the reasons for the refusal and the specific provisions of the Act on which the refusal is based. Where refusal is based on an exception to disclosure, the number of the section, subsection and paragraph of the Act must be provided. The response must also provide the title and business telephone number of an officer or Access and Privacy Coordinator who can answer the members/retailers/customer's questions about the refusal.

· When the record does not exist or cannot be located:

A requested record may never have existed, may have been destroyed in accordance with the Archives Act or other authority, or may have been lost.

The written response must inform the member/retailer/customer that access is refused as the record does not exist or cannot be located and should explain briefly the steps taken to locate the record or, in the case of a record lawfully destroyed the disposal date and the authority for doing so. The response must also provide the title and business telephone number of an officer or the Access and Privacy Coordinator who can answer the members/retailers/customer's question about the refusal. Finally, the response must also tell the member/retailer/customer that he or she has the right to ask for a review of the refusal.

6.12 Giving Access

A member/retailer/customer may request to examine a record or to receive a copy of it.

· When examination of a record is requested:

The member/retailer/customer has the right to examine the record, unless information in it falls within an exception to access and the record must be severed to avoid disclosure of the excepted information. Where a record must be severed, the member/retailer/customer is entitled to examine a copy of the severed version but is not entitled to examine the original record.

If the member/retailer/customer is permitted to examine the record, the Access and Privacy Coordinator must, in the response to the member/retailer/customer, inform the member/retailers/customer where and when the record may be viewed. The Access and Privacy Coordinator should provide the name of the Access and Privacy Coordinator whom the member/retailer/customer should contact to make specific arrangements to view the records.

· When a copy of a record is requested:

If the record can reasonably be reproduced, a copy of the record must be provided to the member/retailer/customer. The member/retailers/customers will be required to pay the applicable copying fee, unless the President and/or Board of Directors of Clarenville Area Chamber of Commerce waive all or part of the fee. An exact copy of the record as provided to the member/retailer/customer should be made for the file.

6.13 Explaining a Record

The President and/or Board of Directors of Clarenville Area Chamber of Commerce who gives access to a record, may give the members/retailers/customers any additional information that the chairperson believes may be necessary to explain it. Time spent preparing or giving the members/retailers/customers an explanation of a record is not an activity for which the members/retailers/customers can be charged a fee.

6.14 Access to Electronic Records

As more and more information is maintained in electronic form, members/retailers/customers will increasingly ask for access to electronic records. The access to electronic records as per subsection 10(1) makes it clear that records in electronic form are subject in the same way as paper records.

> 10(1) Where the requested information is in electronic form in the custody or under the control of a public body, the head of the public body shall produce a record for the applicant where
>
> (a) it can be produced using the normal computer hardware and software and technical expertise of the public body; and
>
> (b) producing it would not interfere unreasonably with the operations of the public body.

The duty to produce a record in electronic form for a member/retailers/customer must be met if the requirements in both paragraphs 10(1)(a) and 10(1)(b) apply. It is important to note that under paragraph 10(1)(b), the interference with operations must be unreasonable. At the same time, the intent of the provision is not to put the computers of Clarenville Area Chamber of Commerce purely at the service of a member/retailer/customer who could make considerable demands upon them. A fee can be charged for internal or external computer programming and data processing costs.

Care must be taken with electronic information to ensure that the most current and reliable version is produced for the member/retailer/customer.

6.15 Creating a Record in the Form Requested

Subsection 10(2) is a discretionary provision, which enables Clarenville Area Chamber of Commerce to comply with an access request by creating a record in the form requested if the President and/or Board of Directors of Clarenville Area Chamber of Commerce is of the opinion that to do so would be simpler or less costly than to produce the records as they exist. Clarenville Area Chamber of Commerce, however, is not obligated to create a record in a form requested by a member/retailer/customer if Clarenville Area Chamber of Commerce does not normally produce such records.

> 10(2) Where a record exists, but not in the form requested by the applicant, the head of the public body may create a record in the form requested where the head is of the opinion that it would be simpler or less costly for the public body to do so.

7.0 Time Limit for Responding and Extending the Time Limit

Public bodies must make every reasonable effort to respond to a request.

7.1 Time Limit for Responding

Clarenville Area Chamber of Commerce will make every reasonable effort to respond to a request for access in writing within 30 days after receiving it, unless the time limit is extended under section 16 or the request has been transferred to another public body under section 17.

The 30-day time limit is based on calendar days, not working days. The 30 days start to run on the day after the date that the application is received by any employee of Clarenville Area Chamber of Commerce.

If the 30-day period ends on a Saturday, Sunday or statutory holiday the time for responding is extended to the next day that is not a Saturday, Sunday or statutory holiday.

Note: Public bodies should try to respond to requests as quickly as possible rather than leaving them until close to the time limit. Section 9 of the Act requires that the head of a public body make every reasonable effort to respond to an applicant without delay.

If the request is incomplete and further information is required from the applicant, the Access and Privacy Coordinator should seek this information immediately. The official date of receipt cannot be changed. Nevertheless, the need to obtain more information may be grounds for extending the time limit under paragraph 16(1)(a).

7.2 Extending the Time Limit

If the time for responding is extended under subsection 16(1), the Access and Privacy Coordinator must send a written notice to the applicant under subsection 16(2) setting out the reason for the extension, indicating when a response may be expected, and explaining that the applicant may make a complaint to the Information and Privacy Commissioner about the extension.

> 16(1) The head of a public body may extend the time for responding to a request for up to an additional 30 days where
> (a) the applicant does not give sufficient details to enable the public body to identify the requested record;
> (b) a large number of records is requested or must be searched, and responding within the time period in section 11 would interfere unreasonably with the operations of the public body; or
> (c) notice is given to a third party under section 28.

7.3 Suspension of Time Limit Where Fee Estimate is given

Where a written estimate of fees is given to an applicant by the President and/or Board of Directors of Clarenville Area Chamber of Commerce under section 68, the time within which the President and/or Board of Directors is required to respond under subsection 11(1) is suspended until the applicant notifies the President and/or Board of Directors that he or she wishes to proceed with the application. If the applicant does not notify Clarenville Area Chamber of Commerce within 30 days from the date the estimate is given that he or she wishes to proceed, Clarenville Area Chamber of Commerce may consider the application to have been abandoned.

7.4 Delay in Response a Deemed Refusal

Where there is a deemed refusal under subsection 11(2), an applicant may ask the Commissioner to review the refusal, as per section 43.

> 11(2) Where the head of a public body fails to respond within the 30-day period or an extended period, the head is considered to have refused access to the record.

7.5 Repetitive or Incomprehensible Requests

The grounds for refusing an access application under section 13 are narrow. Section 13 does not permit the President and/or Board of Directors of Clarenville Area Chamber of Commerce to refuse an application for access simply because the application will involve a large number of records nor is otherwise a nuisance. A decision to refuse access on the basis of section 13 may result in a review by the Information and Privacy Commissioner.

13. The head of a public body may refuse to disclose a record or part of a record where the request is repetitive or incomprehensible or is for information already provided to the applicant.

8.0 Fees

Under subsection 68(1), the President and/or Board of Directors of Clarenville Area Chamber of Commerce may require a person who makes an application for access under the Act to pay some of the costs incurred by Clarenville Area Chamber of Commerce in responding to the application.

8.1 The Schedule of Fees as set by the Minister of Justice provides as follows:

- Application Fee: Each request for access pursuant to the Act must be accompanied by a $5.00 application fee. The application fee must be paid before access to a record is given.
- Search and Preparation Fees: The Schedule of Fees provides for a fee of $15.00 per hour for locating, retrieving, providing and manually producing a record in excess of two free hours, rounded down to the nearest hour.
- Computer Programming and Data Processing Fees: The actual cost of producing a record from information in electronic form shall be charged to the applicant
- Copying Fees: Where the record is stored or recorded in printed form and can be copied or printed using conventional equipment, the cost will be $0.25 per page for providing a copy or print of the record.
- Delivery Fees: The Schedule provides that for shipping a record, the actual costs of the shipping method chosen by the applicant shall be charged.
- Travel Fees: Where the record is stored or recorded in an office outside Clarenville Area Chamber of Commerce's office, the actual cost will be charged to the applicant and will not be in excess of the Provincial Government's travel rate.
- Application for Personal Information: A person requesting access to their own personal information pays only the application fee, copying fee and travel fee if these fees occur.

8.2 Fee Estimates

If an applicant will be required to pay fees over and above the application fee and those fees are expected to exceed $50.00, the President and/or Board of Directors of Clarenville Area Chamber of Commerce is required to give the applicant a fee estimate before providing the services (subsection 68(2)).

As soon as it appears likely that such fees will be charged, Clarenville Area Chamber of Commerce will prepare an Estimate of Costs and send it, along with a covering letter to the applicant.

In the event that the fees are less than $50.00, an Estimate of Costs is not necessary and Clarenville Area Chamber of Commerce will proceed with the request. The fee, however, must be paid in full prior to releasing the records to the applicant. The Access and Privacy Coordinator should send

the applicant a letter of acknowledgment outlining the requirement for payment of fees when no Estimate of Costs is to be applied.

An applicant has up to 30 days from the date the estimate is given to advise Clarenville Area Chamber of Commerce if the estimate is accepted or to modify the request in order to change the fee. If the applicant wishes Clarenville Area Chamber of Commerce to proceed with the original request, he or she must send a signed copy of the Estimate of Costs forms together with a cheque or money order in the amount of 50 percent of the fees. Upon receipt of the applicant's deposit, Clarenville Area Chamber of Commerce will immediately proceed to complete the response. When the response is complete, Clarenville Area Chamber of Commerce will assess fees and send the applicant a bill for the balance owing. When full payment is received, Clarenville Area Chamber of Commerce will provide the response.

When an Estimate of Costs is given to an applicant, the time within which the chairperson is required to respond to the access application, under subsection 11(1) of the Act, is suspended until the applicant notifies the president/owner that he or she wishes to proceed with the application and provides a deposit representing 50 percent of the fees payable.

If the applicant does not notify Clarenville Area Chamber of Commerce within 30 days from the date the estimate is given that he or she wishes to proceed with or modify the application. Clarenville Area Chamber of Commerce may consider the application to have been abandoned.

8.3 Refunds

Fees charged for search and preparation, copying, delivery and travel must not exceed the actual costs of the service. Clarenville Area Chamber of Commerce shall pay refunds to the applicant in the following situations:

- when the actual cost of search and preparation, computer programming or data processing is less than the estimate, the difference should be refunded
- when access to every record requested by an applicant is refused, the amount of estimated fees paid by the applicant shall be refunded.

The applicant's full payment of a balance owing must be received by Clarenville Area Chamber of Commerce prior to releasing the requested records or information. The Access and Privacy Coordinator should send the final invoice to the applicant as soon as the request is complete.

8.4 Fee Waiver

Subsection 68(5) of the Act gives the president/owner of Clarenville Area Chamber of Commerce the discretion to waive the payment of all or part of a fee in accordance with the regulations. The grounds upon which the President and/or Board of Directors may waive all or part of a fee are set out below.

In accordance with section 4 of the regulations, if the applicant requests that fees be waived, the President and/or Board of Directors of Clarenville Area Chamber of Commerce may waive all or part of the fees payable, if the chairperson is satisfied that:

- payment would impose an unreasonable financial hardship on the applicant, or
- the request for access relates to the applicant's own personal information and waiving the fee would be reasonable and fair in the circumstances.

If the President and/or Board of Directors decides to waive all or part of the fees, then the applicant must be notified in writing about the decision. The written notification may be provided to the applicant at the time access is granted to the records being sought, or before it is granted.

9.0 Third Party Notice

Public Bodies hold information about individuals, corporations, groups and non-profit organizations which, if disclosed to others, may result in harm to these third parties.

The third-party notice provisions in sections 27 and 28 of the Act are intended to protect the business interests of third parties who would be affected by disclosure of a record to an applicant under Part II of the Act.

A third party is a person, group of persons or an organization other than the applicant or a public body.

9.1 Notices to Third Party

When the head of a public body contemplates giving access to a record requested by an applicant and the record contains information which might be excerpted from disclosure under section 27, the head must give written notice to the third party. If more than one third party may be affected by the disclosure of information in the record, the head must give notice to each affected third party.

If the head of a public body intends to refuse to give the applicant access to the record, the head is not required to give notice to the third party but may opt to do so.

The process in section 28 does not prevent informal consultations with third parties who may be affected by the disclosure of a record. Indeed, such consultations are advisable when a public body is trying to determine whether the exceptions to disclosure in section 27 apply.

9.2 When and How Notice Must Be Given

Clarenville Area Chamber of Commerce must give notice to a third party under section 28 within the original 30-day period for responding to the application for access, or within the extended time period if Clarenville Area Chamber of Commerce has notified the applicant of an extension. The manner in which notice is to be given is addressed in section 28 of the Act.

9.3 Content of Notice to Third Party and Applicant

The content of the notice to a third party is governed by section 28 of the Act. The notice must

state that a request has been made for access to a record containing information which, if disclosed, might affect the business interests of the third party. It should include a copy of or a description of the contents of the record and advise the third party that he or she may consent to the disclosure or make representations within 20 days after notice is given to Clarenville Area Chamber of Commerce explaining why the information should not be disclosed. In order to enable the third party to make informed representations, the notice should provide sufficient information, including an explanation of the grounds on which records may be withheld under the Act.

When notice is given to a third party under section 28, the applicant must also be given written notice indicating that the requested record may contain information which may affect the interests of a third party and that the third party is being given an opportunity to make representations about disclosure.

28 (1) Where the head of a public body intends to give access to a record that the head has reason to believe contains information that might be excepted from disclosure under section 27, the head shall give the third party a written notice under subsection (3).
(2) Where the head of a public body does not intend to give access to a record that contains information excepted from disclosure under section 27, the head may give the third party a written notice under subsection (3).
(3) The notice shall

- state that a request has been made by an applicant for access to a record containing information the disclosure of which may affect the interest of the third party;
- describe the contents of the record; and
- state that, within 20 days after the notice is given, the third party may, in writing, consent to the disclosure or may make written representations to the public body explaining why the information should not be disclosed.

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

- the record requested by the applicant contains information the disclosure of which may affect the interests of a third party;
- the third party is being given an opportunity to make representations concerning disclosure; and
- a decision will be made within 30 days about whether or not to give the applicant access to the record.

9.4 Response from Third Party

The third party has 20 days after notice is given to consent to the disclosure or to make representations to the public body explaining why the information should not be disclosed. Representations must be in writing. If the third-party consents to disclosure of the record, the public body releases the information unless another exception applies to it.

If a third party makes representations as to why the records should not be disclosed, the public body considers the representations in reaching a decision on access. If there is any doubt that the third party has understood the significance of the notice or the criteria that apply in decisions regarding access, the public body should contact the third party to discuss the matter.

If a third party does not respond to the notice within 20 days of being given notice, the public body must make a decision based on the information available. The public body should contact the third party a few days before the 20 days are up to remind them that the notice period is expiring.

9.5 Decision by Head of a Public Body

The head of the public body has 30 days after the third-party notice was given to reach a decision on whether or not to give access to the record to the applicant. However, a decision cannot be made until the third party responds, or on the 21st day after notice is given, whichever comes first.

9.6 Decision to Give Access

If, after considering the representations of the third party, the head decides to give access to the record or part of the record to the applicant, the third party has an additional 20 days from the date notice of this decision is given (subsection 29(3)) to ask for a review by the Information and Privacy Commissioner, as per section 43 of the Act. The records in question must not be disclosed to the applicant during this period.

If the third party does not request a review by the Information and Privacy Commissioner within this 20-day time period, the head of the public body cannot give access to any record that is the subject of the review until it is dealt with by the Information and Privacy Commissioner.

9.7 Decision to Refuse Access

If the head decides not to give access to the record, the applicant has the right to ask for a review of the refusal by the Information and Privacy Commissioner, in accordance with section 43, or appeal the refusal to the Trial Division, in accordance with section 60.

10.0 Exception to Disclosure

An applicant under Part II of the Act 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. However, the right of the access does not extend to information in a record which falls within an ‘exception to disclosure’ [subsection 7(2)]. As well, there is no right to the excluded records listed in subsection 5(1) of the Act.

Information in a record may fall within more than one exception to disclosure. Access and Privacy Coordinators reviewing records should consider that while one exception may not apply, another might.

The exceptions to disclosure are in sections 18 to 30 of the Act. Each of these sections deals with a separate category of excepted or protected information. Generally, there are three mandatory exceptions to disclosure and eight discretionary exceptions to disclosure.

10.1 Exceptions Apply to Information in a Record - Severing

7(2) "The right of access to a record does not extend to information exempted from disclosure under this Act, but if it is reasonable to sever that information from the record, an applicant has a right of access to the remainder of the record."

If information in a record falls within an 'exception to disclosure' in sections 18 to 30 of the Act, an applicant is not entitled to access that information. More than one exception may apply to the same information.

The exceptions to disclosure in sections 18 to 30 of the Act authorize or require the head of a public body to refuse to disclose "information." The term information, rather than the term record, is used in the exception sections to indicate that the exceptions apply to the information in a record and not necessarily to the whole record.

In general, access to a record cannot be refused because of its type, title, or form. Rather, the information in the record must be carefully examined to determine if an exception to disclosure applies.

Subsection 7(2) of the Act requires that, where an exception applies to a portion of the information in a record, only that portion is severed and the applicant is entitled to access the remainder of the record unless another exception to disclosure applies. The object of severing is to release as much information in a record as possible, without disclosing the information protected by an exception.

10.2 Interpretation of Exception Provisions

A refusal to disclose information in a record to an applicant under Part II of the Act must be based on one or more of the exceptions to disclosure set out in sections 18 to 30, unless the record does not fall under Section 5 of the Act.

For example, it is not appropriate to refuse access simply because disclosure of the record may cause embarrassment to the public body - embarrassment is not an exception to disclosure under the Act.

In considering whether an exception to disclosure applies to information in a requested record, the following principles should be kept in mind:

- Paragraphs 3(1)(a) and 3(1)(c) state that the purpose of the Act is to provide a right of access to records, subject to the "limited and specific" exceptions set out in the Act.
- Generally, the public body bears the burden of proving that an exception to disclosure is justified if there is a complaint to the Information and Privacy Commissioner or an appeal to court (section 64).

10.3 Limits to an Exception

In determining whether an exception to disclosure applies, it is extremely important to read all the subsections and paragraphs in the section relating to that exception. Frequently, an exception to disclosure is followed by specific limits which have the effect of significantly cutting down or limiting the scope of that exception.

An example of an exception to disclosure which contains a specific limit is section 20, the exception for advice to a public body. Subsection 20(1) set out the exception to disclosure, while subsection 20(2) must be disclosed unless an exception in another section of the Act applies.

10.4 Exceptions Protecting Third Parties

Certain exceptions to disclosure protect information which has been provided by, which is about, or could affect, a "third party."

"Third party" is defined in section 2 of the Act to mean a person, group of persons or an organization other than the applicant or public body.

Information in a record must be carefully reviewed to ensure that privacy and other third party rights are protected under the Act. Even where an applicant has applied for access to a record containing personal information about him or herself, that record may also contain information provided by, about or affecting one or more third parties, including the personal information of another individual.

Section 28 of the Act provides that the head of a public body shall, where practicable, notify a third party in writing if the head is considering giving access to a record that may contain information which is excerpted from disclosure under section 27 (Business Interests of Third Parties).

10.5 Mandatory and Discretionary Exceptions to Disclosure

There are two types of exceptions to disclosure in the Act: mandatory exceptions and discretionary exceptions.

A mandatory exception to disclosure contains the following words: "The head of a public body shall refuse to disclose information..."

If facts exist or may exist which bring the information, or part of the information, contained in a record within a mandatory exception, the head is required to refuse to disclose the information. There is no discretion to disclose information under Part 2 of the Act if a mandatory exception applies.

The three mandatory exceptions to disclosure are:

- Section 18 - Cabinet Confidences [subsection 18(2)]

- Section 27 - Business Interests of Third parties [subsection 27(3)]
- Section 30 - Disclosure of Personal Information [subsection 30(2)]

A discretionary exception to disclosure contains the following words: “The head of a public body may refuse to disclose information...”

A discretionary exception to the right of access permits the head of a public body to disclose information in a record, even though the information falls within the exception.

In determining whether to apply a discretionary exception, the head of a public body should follow a two-stage process:

- The head must first determine whether or not some or all of the information in the requested record falls within the discretionary exception provision, and
- The head must then determine whether or not to disclose the information, even though the exception could be relied upon as a basis for refusing access. In other words, if a discretionary exception applies, the head must still consider whether it is appropriate to disclose the information in the circumstances (unless an exception in another section of the Act applies). A decision whether or not to disclose information falling within a discretionary exception to disclosure is an exercise of discretion

10.6 Exercising Discretion

The discretionary exceptions to disclosure recognize that, on occasion, the head of a public body may decide, after considering all relevant factors, that it is appropriate to disclose the requested information even though an exception could be relied upon as a basis for refusing access.

The following summary of some of the general principles which apply to the exercise of discretion:

> ...the discretion must be exercised by the authority to which it is committed, which must act on its own and not under the dictation of any other body, and... it must be willing to exercise its discretion in each individual case which comes before it. The authority must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation which gives it power to act, and must not act arbitrarily or capriciously.

The exercise of discretion is not simply a formality where that head of the public body considers the issues before routinely saying no. The head must consider whether or not to exercise the discretion to disclose information with respect to each request, taking into consideration the information requested and the particular circumstances of the case. The head must not replace the exercise of discretion with a blanket policy that information will not be released, simply because it can be withheld under one of the discretionary exceptions. A public body may develop guidelines on exercising discretion but may not treat them as binding rules. In exercising his or her discretion, the head must “have regard to all relevant considerations” and to the spirit and purposes of the Act.

The information and Privacy Commissioner when investigating a complaint about a refusal of access, and the court when hearing an appeal about a refusal of access, cannot override a head's decision where the head has properly exercised his or her direction.

10.7 Reasonable Expectation of Harm

Many of the exceptions to disclosure in the Act contain a "reasonable expectation of harm" test. These exceptions are concerned with the consequences that would result to the public body or another party if the information were disclosed.

A "reasonable expectation of harm" test is indicated by wording such as:

- "could reasonably be expected to harm"
- "could reasonably be expected to interfere with"
- "could reasonably be expected to result in (a specified harm)," etc.

Examples of exceptions which contain a 'reasonable expectation of harm' test include section 27 and section 22.

When considering whether such an exception applies, the head of the public body must determine whether disclosure of the requested information "could reasonably be expected" to cause the harm described in the exception provision. Whether or not disclosure, "could reasonably be expected," to result in a specified harm or injury is a question of fact which must be determined in the circumstances of each application for access and in the context of the information contained in the record requested.

There must be a clear and direct link between the disclosure of the information and the harm that is alleged and the expectation of harm must be reasonable.

Reasonableness is judged by an objective standard. A "reasonable expectation" is one which is not fanciful, imaginary, or contrived but rather one which is based on reason. However, the requirement that an expectation be reasonable does not require that it will be a certainty. It is not necessary to prove that disclosure of the requested record will actually result in alleged harm. The fact that disclosure of a similar record in the past did not result in the alleged harm is a relevant consideration but is not determinative of the issue. Evidence of reasonable expectation of harm is not required to be detailed and convincing; there need only be evidence of a reasonable expectation of probable harm, which of necessity involves some speculation.
In short, the "reasonable expectation of harm" requires that the facts establish a likelihood that the specified harm will result from the disclosure of the record or part of the record.

10.8 Exceptions

Subsection 18(1) is intended to prevent the harm to government that is presumed to occur if the substance of deliberations is revealed before or too soon after the issues were considered or revealed prior to being ready for public review. Premature disclosure of Cabinet deliberations

inhibits the ability of Cabinet members to debate issues openly and freely, thereby reducing the effectiveness of Cabinet's decision-making role.

For the purposes of this provision, substance means the essence or essential part of a discussion or deliberation. Deliberation means the act of weighing and examining the reasons for and against a contemplated act or course of conduct. It also includes an examination of choices of direction or means to accomplish an objective.

Subsection 18(1) provides a mandatory exception to the general right of access established by the section 7 of the Act. Subsection 18(1) applies to all records in the custody or under control of public bodies as defined in the Act. The exception does not apply to records that have been in existence for 20 or more years, or to records of a decision made by Cabinet or one of its committees on an appeal under an Act [subsection 18(2)].

Public bodies must consult with Cabinet Secretariat in regards to information that may be excerpted from disclosure under subsection 18(1). The public body must obtain sign-off from Cabinet Secretariat before the head of the public body responds to an access request.

Determine the age of the record. If the record has been in existence for 20 or more years, this exception does not apply, and the record must be released unless another exception, without a time limit applies.

- Preliminary Examination
  Notify the Access and Privacy Coordinator, Cabinet Secretariat, that a request has been received for which the release of records may reveal Cabinet confidences pursuant to section 18(1). Note: All decisions related to applying section 18 to any record must be made in consultation with Cabinet Secretariat.
- Line by Line Review
  Identify information that may be severed under other exceptions. Undertake formal consultation with Cabinet Secretariat.
- Severance
  The public body should forward any records that may be related to section 18(1) to Cabinet Secretariat for review and confirmation of section 18(1) information. Cabinet Secretariat will highlight those sections of records relevant to section 18 and return the highlighted version to the public body for formal sign-off by the head.

10.9 Local Public Body Confidences [subsection 19(1)]

Subsection 19(1) gives the head of a local public body the discretion to refuse to disclose information that would reveal a draft of a resolution, by-law or other legal instrument, a draft of a document or module. The final version is not protected by this exception.

A resolution means a formal expression of opinion or will of a public body, adopted by a vote of those present. The term usually refers to the adoption of a motion such as an expression of opinion, a change to rules or a vote of support.

Subsection 19(1) operates in conjunction with other Acts, or with Regulations made under paragraph 73(k) of the Access to Information and Protection of Privacy Act, to provide limited protection for the deliberations of meetings of a local public body's elected officials, or its governing body or a committee formed by the public body. A meeting open to the public, which no members of the public happen to attend, is not a meeting held in the absence of the public.

Common types of records relating to meetings that may be protected include agendas, minutes, personal notes, and other records that document the information of deliberations within such a meeting.

Determine the age of the record. If the requested record has been in existence for 15 or more years, this exception does not apply [paragraph 19(2)(b)] and the record must be released unless another exception applies.

10.10 Policy Advice or Recommendations [subsection 20(1)]

Subsection 20(1) gives the head of the public body the discretion to refuse to disclose advice or recommendations prepared by or for a minister or the public body.

Subsection 20(1) does not apply to records which have been in existence for 15 or more years. Also, the head cannot refuse to disclose information under this exception that falls within the list provided in paragraphs 20(2)(a) to (m).

If a public body determines a record is included in subsection 20(2), the record cannot be excerpted from disclosure under subsection 20(1). However, the public body can review the record to determine if another exception applies.

Although section 20 does not require the head of the public body to consider potential harm in making a decision whether to withheld records, potential harm can be a factor in considering the use of section 20. This section is intended to allow full and frank discussion of policy issues within the public body, preventing the harm which would occur if the deliberative process were subject to excessive scrutiny, while allowing information to be released which would not cause real harm.

Section 20 may be applied by public bodies in circumstances where the withholding of a record will protect the open and frank discussion of policy issues. In exercising discretion under section 20, public bodies are encouraged to consider the release of advice and recommendations which have been approved and announced, or implemented.

10.11 Legal Advice (section 21)

The primary purpose of this exception is to put a public body on a level playing field with other persons when seeking legal advice and communications that are subject to solicitor client privilege or that would disclose legal opinion provided to a public body by a law officer of the Crown.

The purpose of the exception is to facilitate full and frank consideration and discussion of the circumstances on which legal advice is sought, so that the advice may be informed and effectual, and to facilitate the preparation of a case for trial.

Under solicitor client privilege, a legal advisor must refuse to disclose communication between the legal advisor and the client, unless the client consents to the disclosure. The privilege belongs to the client and can only be waived by the client.

Generally, the decision on whether it is required by law or otherwise in the public interest to waive privilege will be determined in the course of routine consultations between the client public body and the department of justice or designated legal advisor.

Section 21 protects information flowing in both directions between the legal advisor and the client. This means that solicitor client privilege applies to client-generated documents, as well as legal opinions. The document may be as formal as a communication between lawyer and client or as simple as notes on file made to assist the lawyer in litigation.

Section 21 is not limited to the protection of legal advice and communications between a legal advisor and a minister of a public body. The client can be a third party which is not a public body under the Act, but whose privilege documents are in custody or control of a public body, and where the client has not waived the privilege.

Decisions on whether to waive privilege should be determined through consultations between the client public body and the Department of Justice or the public body's designated legal advisors.

Public bodies shall undertake a review, and shall determine whether section 21 applies to a particular record. A request made under a concurrent process should not be a factor in the public body making a decision with respect to access to that record.

10.12 Disclosure Harmful to Law Enforcement [subsection 22(1) and (2)]

Section 22 is a discretionary exception to the public's right of access to information the disclosure of which could reasonably be expected to harm law enforcement.

Under section 22, a head of a public body must not refuse to disclose routine inspection reports or statistical prosecution information. A head must not refuse to disclose a report on the effectiveness of a law enforcement program, unless disclosure of the report would interfere with or harm any of the matters listed in subsections 22(1) and (2), or if any other exception applies. As well, a head must not refuse to disclose statistical information on decisions to approve or not approve prosecutions.

If a record contains information the disclosure of which would be harmful to law enforcement, subsection 12(2) permits the head to refuse to confirm or deny its existence. A refusal to confirm or deny the existence of a record is a significant limit to the right of access.

Law enforcement is not limited to the investigative activities of police forces; paragraph 22(1)(a) provides an exception for a wide variety of investigations and proceedings by public bodies. It is also important to look to the definition of law enforcement in paragraph 2(i). In addition to policing, this definition includes any investigation, inspection or preceding that could lead to a penalty or sanction.

The degree of harms to law enforcement will depend, in part, on the sensitivity of the law enforcement information. For example, life-and-death information relating to the identity of confidential sources of law enforcement information may be withheld even if there is a possibility of harm to law enforcement.

Public bodies may refuse to disclose information which would harm a law enforcement matter.

Although it is not necessary to demonstrate that actual harm will result, or that actual harm resulted from a similar disclosure in the past, public bodies should consider past experiences as a factor in determining whether harm to a law enforcement matter has occurred.

Public bodies shall provide explicit assurances of confidentiality to confidential sources of law enforcement information, whenever possible.

Public bodies may refuse to disclose law enforcement information provided by an anonymous source if there is no way to determine whether disclosure of the information would result in the identification of that anonymous source.

Public bodies must not refuse to disclose under section 22 routine inspection reports or statistical prosecution information.

Public bodies must not refuse to disclose under section 22 a report on the effectiveness of a law enforcement program, unless disclosure of the report would interfere with or harm any of the matters listed in the section.

Subsection 12(2) permits public bodies to refuse to confirm or deny the existence of a record if the record contains information the disclosure of which would be harmful to law enforcement.

If a public body has started an investigation, records that are relevant to the investigation are excerpted from disclosure regardless of when the record was created

10.13 Disclosure Harmful to the Financial or Economic Interests of a Public Body [subsection 24(1)]

Subsection 24(1) gives the head the discretion to refuse to disclose information the disclosure of which could harm the financial or economic interests of a public body or the government of Newfoundland-Labrador. This section also protects from release information which could harm the ability of the government of Newfoundland and Labrador to manage the economy.

Section 24 does not apply to the results of product or environmental testing carried out by or for the public body, unless the testing was done on a fee for service basis or for the purpose of developing methods of testing [subsection 24(2)].

Public bodies hold significant amounts of financial and economic information critical to their financial management and the management of the provincial economy. Section 24 ensures that, where harm would result from disclosure, public bodies may withhold certain portions of this information.

Public bodies may refuse to disclose information the disclosure of which could harm the financial or economic interests of a public body or the government of Newfoundland and Labrador or the ability of the government to manage the economy. In determining whether it is reasonable to expect any harm, the head of the public body needs to consider all aspects of the mandate and activities of the public body, and not limit that consideration only to the records requested.

A trade secret must be:

- owned by the public body or the government of Newfoundland and Labrador, or
- the public body or the government must be capable of proving a claim of legal right in the information (such as under a license agreement)

A public body shall consider the financial or economic interests of other public bodies when reviewing records in their custody or control. Consultation between public bodies in these situations is essential to determine harm under section 24.

The fact that information belongs to one of the categories listed in paragraphs 24(1)(a) to (e) is not sufficient in itself to establish that it meets the harms test set out in subsection 24(1). Although there is a presumption that the disclosure of information in these categories would harm the financial or economic interests of a public body, the head of the public body must have detailed and convincing evidence of harm in order to apply the exception.

Public bodies must not refuse to disclose under subsection 24(1) the results of product or environmental testing carried out by or for that public body, unless the testing was done for a fee or as a service to someone other than the public body, or for the purpose of developing methods of testing.

10.14 Disclosure Harmful to Conservation (section 25)

Section 25 gives the head discretion to refuse to disclose information which, if disclosed, could result in damage to or interferes with the conservation of fossil sites, natural sites, valuable anthropological or heritage sites, or endangered, threatened, vulnerable or rare living resources.

Public bodies shall exercise prudence when considering disclosure of records to which section 25 may apply, bearing in mind the potential for damage to, or interference with, the conservation of fossil sites, natural sites, valuable anthropological or heritage sites, or endangered, threatened, vulnerable or rare living resources.

Public bodies shall consult with the Department of Tourism, Culture and Recreation before disclosing information concerning sites that have an anthropological or heritage value.

If a public body identifies information that has conservation of endangered, threatened or rare living resources value, it shall consult with the Department of Environment and Conservation to determine if other circumstances are relevant in making its decision.

10.15 Disclosure Harmful to Individual or Public Safety (section 26)

Subsection 26(1) gives the head discretion to refuse to disclose information to an applicant, including the applicant's own personal information, where the disclosure could threaten another person's safety, mental or physical health, or interfere with public safety.

Subsection 26(2) also gives the head discretion to refuse to disclose an applicant's personal information if disclosing the information to that applicant would result in immediate and grave harm to the applicant's safety, or mental or physical health.

You will note that the use of the term "immediate and grave harm" in subsection 26(2) establishes a higher degree of harm, as opposed to the terms "threaten" and "interfere" used in subsection 26(1).

Public bodies shall apply subsection 26(1) only where there are reasonable grounds for the head to believe that a threat to anyone's safety or mental or physical health, or an interference with public safety could result from a disclosure.

Public bodies shall act prudently in applying subsection 26(1) and shall regard the safeguarding of public health and safety as a priority in exercising discretion.

Public bodies shall apply subsection 26(2) only where there are reasonable grounds for the head to believe that an applicant's own personal safety or mental or physical health would be compromised if the requested information were to be disclosed.

The standard of proof to be applied by the head of the public body is a balance of probabilities that the potential violence or harm will result. The head of the public body is not required to prove beyond doubt that the harm will result.

10.16 Disclosure Harmful to the Business Interests of a Third Party [subsection 27(1)]

Subsection 27(1) is a mandatory exception to the public's right of access to information. It protects information which, if disclosed, would harm a third party's business interests.

Paragraphs 27(a) to (c) provide a three-part harms test; the information in the question must meet ALL parts of the following test before a public body may apply the exception:

- The information would reveal third party trade secrets, or, the commercial, financial, labour relations, scientific or technical information of or about a third party,

- The information was supplied in confidence, either implicitly or explicitly, and

- Disclosure of information could result in one or more specified harms.

Many of the third parties contemplated for protection by subsection 27(1) will be commercial interests which have supplied information about private sector enterprises to government. However, the exception is not limited to information supplied by any individual or organization that meets each of the three-part test.

Section 27 addresses information about the business interests of a third party where that information is held by a public body. Section 27 protects the information from disclosure where all three parts of the test are met, whether the third party whose business interests may be affected supplied the information or some other party supplied it.

Subsection 27(2) creates a mandatory exception to the public's right of access where the information in question was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax. This applies to both personal and business information.

The head cannot refuse to disclose information under subsection 27(1) or (2) where the third-party consents to the disclosure under subsection 27(3).

Because this exception concerns the information of third parties, public bodies may apply it only in conjunction with the third-party notice provisions in sections 28 and 29.

Determine the age of the record. If the record has been in existence for 50 or more years and is in the custody or control of the Provincial Archives of Newfoundland and Labrador or the archives of a public body, then this exception does not apply.

10.17 Disclosure of Personal Information (section 30)

Section 30 is a mandatory exception which limits the disclosure of an individual's personal information to a third party.

Subsection 30(1) provides a mandatory exception to the general right of access established by section 7 of the Act. Subsection 30(1) applies to all records in custody or under the control of public bodies as defined in the Act. The exception does not apply to records described in subsection 30(2).

Section 30 requires the head to refuse disclosure of personal information. This protection applies only to natural persons or individuals. Section 30 is considered when an applicant makes a request for someone else's personal information. Of course, a party may consent to the disclosure of their own personal information.

A public body shall not release personal information as defined in paragraph 2(o) unless the information falls within one of the exceptions contained within subsection 30(2).

If a record contains personal information of a third party, subsection 12(2) permits the head to refuse to confirm or deny its existence. A refusal to confirm or deny the existence of a record is a significant limit to the right of access.

10.18 Public Interest Override (section 31)

Section 31 is a general override provision that obligates the head of a public body to disclose information without delay when:

- the information is about a risk of "significant harm" to the environment or to the health and safety of the public or a group of people, and
- the disclosure of which is clearly in the public interest

Inclusion of the term significant in this provision means that the head of a public body must be convinced that the harm risked is considerably greater than in normal circumstances. Risk of harm is generally taken to mean the chance, possibility or certainty of danger, loss, injury or other adverse consequences.

The provision refers to "information" as opposed to "records." This distinction means that the public body might release only basic or summary information and not the whole record of an event, subject or issue that affects the public interest. In other words, disclosure might be one of the facts surrounding an event or issue as opposed to the documents recording those facts.

Section 31 is a mandatory provision that overrides all other sections of the Act. Disclosure may be to the public, to an affected group of people or to the applicant. Any information, including personal information, which meets the criteria set out in the provision, must be disclosed whether or not a formal request for access is made.

This provision requires that action be taken without delay. The assumption is that any situation that warrants consideration of disclosure under this section would be urgent, and no delay should occur where disclosure is demanded by events that have a significant impact on the environment or on health and safety.

Section 31 anticipates disclosure in three different ways:

- to the public generally
- to an affected group of people, or
- to an applicant making a request

If it is necessary to disclose to the general public, a public body must ensure that the information is released in a manner designed to reach the public at large, normally through radio, television and newspapers. Where the information relates to circumstances that affect a specific group of people, the public body must ensure that effective ways are used to reach the affected group, and not the

public at large. Where information relates to an applicant, the public body must ensure that the applicant is notified and no one else.

In all cases, only the minimum amount of personal information necessary to alert the public concerned about the risk should be disclosed.

The head of the public body must approve any release of information under section 31. This approval must not be delegated below the Deputy Minister or equivalent level.

The head of a public body must disclose information falling under subsection 31(1) even if there has been no formal access request under the Act.

The head of the public body is not required to wait for any prescribed period of time or for input after notifying the third party, before disclosing information under section 31.

The head of the public body must ensure that the information is released in a manner designed to reach the intended audience, i.e., the public, the affected group or the applicant.

11.0 Independent Review of the Decisions

One of the purposes of the Access to Information and Protection of Privacy Act is to provide for an independent review of the decisions of public bodies respecting access to information and protection of personal information under the Act [paragraph 3(1)(e)].

Part V of the Act assigns this independent review function to Newfoundland and Labrador's Information and Privacy Commissioner. The Commissioner is responsible for:

- monitoring compliance with the Act by public bodies
- promoting public awareness of the Act
- investigating and dealing with complaints respecting access to information and correction of personal information under the Act

Newfoundland and Labrador's Information and Privacy Commissioner cannot order a public body to comply with the Act. However, the powers of the Information and Privacy Commissioner to monitor compliance with the Act, the mediate and make recommendations respecting complaints and to make his or her findings and recommendations public, have a significant persuasive effect on the actions of public bodies.

11.1 The Information and Privacy Commissioner

Newfoundland and Labrador's Information and Privacy Commissioner (the Commissioner) is an officer of the House of Assembly who is appointed under the Access to Information and Protection of Privacy Act (as amended). As an officer of the House of Assembly, the Commissioner is independent of the Government of Newfoundland and Labrador.

The Commissioner is appointed by the Lieutenant-Governor in Council on a resolution of the House of Assembly for a term of two years. A person may be reappointed as Commissioner for further terms of two years.

Persons employed under the Commissioner are members of the public service of Newfoundland and Labrador. The Commissioner may delegate to any person on his or her staff a duty or power under the Act.

The Commissioner, and any person acting for or under direction of the Commission, is protected from legal proceedings for "anything done, reported or said in good faith in the exercise or performance of a duty or power under" the Act. This means that, as long as the Commissioner and his or her staff act honestly and with the intention of complying with the Act, no legal proceedings can be brought against them.

Under the Act, the Commissioner must make an annual report to the House of Assembly through the Speaker on:

- the exercise and performance of his or her duties and functions under this Act
- the Commissioner's recommendations and whether public bodies have complied with the recommendations
- the administration of this Act by the public bodies and the minister responsible for this Act, and
- other matters about access to information and protection of privacy that the Commissioner considers appropriate

11.2 General Powers and Duties of the Commissioner

Paragraph 3(1)(e) of the Act provides that one of the purposes of the Act is to provide for an "independent review of the decisions of the public bodies" respecting access to information and protection of personal information under the Act. This purpose is carried out through the office of the Commissioner.

The Commissioner has a continuing responsibility to ensure that public bodies are complying with the requirements of the Act.

The Commissioner cannot make orders that bind a public body. However, the broad powers of the Commissioner to monitor, investigate, and make recommendations, and to make his or her findings and recommendations public will have a significant impact on the actions of public bodies.

In general terms, the responsibilities of the Commissioner under the Act fall into three categories:

- monitoring compliance with the Act by the public bodies
- promoting public awareness of the Act, and
- investigations and dealing with the complaints respecting access to information and correction of the personal information under the Act

As well, section 59 requires the Commissioner to submit an annual report to the House of Assembly.

> In addition to the Commissioner's powers and duties respecting reviews, the Commissioner may:
> a) make recommendations to ensure compliance with this Act and the regulations;
> b) inform the public about this Act;
> c) receive comments from the public about the administration of this Act;
> d) comment on the implications for access to information or for protection of privacy of proposed legislative schemes or programs of public bodies;
> e) comment on the implications for protection of privacy of
> i) using or disclosing personal information for record linkage, or
> ii) using information technology in the collection, storage, use or transfer of personal information;
> f) bring to the attention of the head of a public body a failure to fulfill the duty to assist applicants; and
> g) make recommendations to the head of a public body or the minister responsible for this Act about the administration of this Act.

11.3 Powers of a Commissioner under the Public Inquiries Act

In carrying out an investigation under Part V of the Act, the Commissioner has all the powers and protections of a commissioner under the Public Inquiries Act [subsection 52(1) of the Access to Information and Protection of Privacy Act]. These powers include:

> 3. (1) The commissioner or commissioners shall have the same power to enforce the attendance of witnesses and to compel them to give evidence that is vested in a court of law in civil cases; and a false statement made by the witness on oath or affirmation shall be an offence punishable in the same manner as perjury.
> (2) A witness shall not be excused from answering a question upon the ground that the answer to the question may tend to criminate the witness, or may tend to establish his or her liability to a civil proceeding at the instance of the Crown or of any person.
> (3) Where a witness objects to answer upon the ground that the answer may tend to criminate him or her or may tend to establish his or her liability to a civil proceeding at the instance of the Crown or of a person, and where but for this Act or the Canada Evidence Act the witness would have been excused from answering the question and although the witness is because of this Act or the Canada Evidence Act compelled to answer the answer so given shall not be used or receivable in evidence against the witness in a criminal proceeding taking place later, other than a prosecution for perjury in the giving of the evidence.

11.4 Power to Require Production of Records

The Commissioner:

- may require any record in the custody or under the control of a public body that the Commissioner considers relevant to an investigation to be produced to the Commissioner [subsection 52(2) of the Act], and
- may examine any information in a record, including personal information [subsection 52(2)]

A public body is required to produce any record or a copy of a record that is relevant to the investigation being carried out by the Commissioner within 14 days [subsection 52(3)].

If it is not practicable to make a copy of the requested record, the head of the public body may require the Commissioner to examine the original record at its site [subsection 52(4)].

11.5 Right to Enter Offices of Public Bodies, Examine Records, etc.

Despite any other statute or regulation or any privilege of the law of evidence, in exercising powers and performing duties under the Act, the Commissioner has the right:

- to enter any office of a public body and examine and make copies of any record in the custody of the public body [paragraph 53(a)], and
- to speak in private with any officer or employee of a public body [paragraph 53(b)]

An example of a privilege of the law of evidence is solicitor-client privilege.

11.6 Duty to Produce Records, etc.

The duty of a public body and its officers and employees to produce a record or a copy of a record requested by the Commissioner under the Act applies despite any other statute or regulation or any privilege of the law of evidence [subsection 52(3)].

Indeed, it can be an offence under the Act not to provide records to the Commissioner. Any person who willfully:

- makes a false statement to the Commissioner or another person performing duties or exercising powers under the Act [paragraph 72(b)], or
- misleads or attempts to mislead the Commissioner or another person in performing duties or exercising powers under the Act [paragraph 72(b)], or
- obstructs the Commissioner or another person in performing duties or exercising powers under the act [paragraph 72(c)], or
- destroys a record or erases information in a record that is subject to the Act with the intent to evade a request for access to records [paragraph 72(d)] is guilty of an offense under the Act. If found guilty by a court, that person is liable to a fine of up to $5000 or imprisonment not exceeding 6 months, or both (section 72).

11.7 Protection of Information Provided to the Commissioner

The Commissioner may carry out an investigation under the Act in private [subsection 47(2)].

A statement made or an answer given by a person during an investigation by the Commissioner cannot be introduced or admitted as evidence in a court or in any other proceeding, except:

- in a prosecution in the criminal courts for perjury in respect of sworn testimony [paragraph 54(1)(a)], or
- in a prosecution for an offence under the Act [paragraph 54(1)(b)], or
- in an appeal to the Newfoundland and Labrador Supreme Court Trial Division under the Act, when the Commissioner is a party to the appeal [paragraph 54(1)(c)]

The Commissioner, and anyone acting for or under the direction of the Commissioner, cannot be required to give evidence, in a court or in any other proceeding, about information that comes to their knowledge when perforating duties or exercising powers under the Act [subsection 54(2)].

Anything said, any information supplied and any record produced by a person during an investigation by the Commissioner under the Act is privileged in the same manner as if it were said, supplied or produced in a proceeding in a court.

11.8 Restrictions on Disclosure of Information by the Commissioner

Section 56 of the Act places restrictions on disclosure by the Commissioner, and by the Commissioner's staff, of information they obtain in perforating duties or exercising powers under the Act. In particular, the Commissioner may disclose, or authorize anyone acting for or under his or her direction to disclose, only:

- information that is necessary to perform a duty or to exercise a power of the Commissioner under the Act [paragraph 56(2)(a)]
- information that is necessary to establish the grounds for findings and recommendations contained in a report under the Act [paragraph 56(2)(b)]
- information in the course of a prosecution or a prosecution or an appeal referred to in subsection 54(1) [subsection 56(5)]

In addition, the Information and Privacy Commissioner may disclose to the Newfoundland and Labrador Minister of Justice and Attorney General information relating to the commission of an offence under the Act or under any other statute or regulation of Newfoundland and Labrador or Canada if the Commissioner considers there is reason to believe an offence has been committed [subsection 56(4)].

In conducting an investigation and in perforating any other duty or exercising any power under the Act, the Commissioner, and anyone acting for or under the direction of the Commissioner, must take "every reasonable precaution" to avoid disclosing, and must not disclose:

- any information the head of a public body is authorized or required to refuse to disclose in response to a request from access to information under Part II or III of the Act [paragraph 56(3)(a)], and whether information exists, if the head of a public body is authorized under subsection 12(2) of the Act to refuse to confirm or deny that the information exists in response to a request for access to information under Part II of the Act [paragraph 56(3)(b)]

12.0 Reviews and Complaints

The right to an independent review of the decisions and actions of the public bodies under the Act is fundamental to guaranteeing access to information and protection of personal information. The right to request a review by Newfoundland and Labrador's Commissioner under Part V of the Act (sections 43 to 59) about the decisions of public bodies relating to access to records and about the correction of personal information helps ensure that the purposes of the Act, as set out in section 3. In addition, the right to make a complaint about a specific action under the Act helps ensure a fair and equitable process.

12.1 Who may Request a Review or Make a Complaint

Reviews about access to records or correction of personal information

- A person who has made a request to a public body for access to a record or correction of personal information may ask the Commissioner to review such a decision, act or failure to act on the head of the public body that relates to the request [subsection 43(1)]
- A third party who is given notice under section 28 of a decision by the head of a public body to give access to a record containing information affecting the third party's business interests may ask the Commissioner to review such a decision [subsection 43(2)]

In addition to conducting reviews, section 44 allows the Commissioner to investigate and attempt to resolve complaints on behalf of applicants who feel that:

- an extension of time for responding to a request is not in accordance with section 16, or
- a fee required under the Act is inappropriate

Where a person has a right to request a review or to make a complaint under the Act, the request or complaint may be made by another person who is authorized under section 65 to act on behalf of that person.

12.2 How and When a Request for Review May Be Made

A request for review under section 43 by a person respecting his or her request for access to a record must be delivered to the Commissioner within 60 days after the person is notified of the decision respecting access by the head of the public body [paragraph 45(1)(a)]. It is important to note, however, that the Commissioner maintains the discretion to extend this period [paragraph 45(1)(c)].

If the head of a public body fails to respond to a request for access to a record under Part II of the Act within the required time, the failure is treated as a decision to refuse access and the 60 day time limit referred to in paragraph 45(1)(a) does not apply [subsection 45(2)].

A request for review by a third party respecting a decision of the head of a public body to give access to a record affecting the third party's business interests under section 28 of the Act must be made to the Commissioner within 20 days after notice of the head's decision is given [paragraph 45(1)(b)].

12.3 Reviews by the Commissioner

The Commissioner shall provide a copy of a request for review to the head of the public body concerned and in the case of a request for review from a third party, to the applicant concerned [subsection 45(3)].

When reviewing a decision or investigating a complaint, the Commissioner may, within 30 days of the request, take any steps that he or she considers appropriate in order to reach an informal resolution (section 46). Such a resolution must be to the satisfaction of the parties and be in a manner consistent with the purposes of the Act. The purposes of the Act are set out in section 3 of the Act and Chapter 1 of this manual.

During an investigation, the Commissioner is required to give the person requesting a review, a third party and any other person the Commissioner considers appropriate an opportunity to make representations [subsection 47(1)]. These representations may be made to the Commissioner through legal counsel or through an agent [subsection 47(4)]. In addition, the Commissioner has the discretion to decide whether representations are to be made orally or in writing [subsection 47(3)].

The Commissioner may conduct a review in private and a person who makes representations during such a review is not entitled to be present during an investigation nor to comment on representations made to the Commissioner by another person [subsection 47(2)].

The Commissioner must complete a review and make a report within 90 days after receiving the request for review (section 48). The following section provides details on the report of the Commissioner.

12.4 Commissioner's Report about a Review

On completing a review, the Commissioner is required to prepare a report containing his or her findings on the review and, where appropriate, his or her recommendations and the reasons for those recommendations [paragraph 49(1)(a)].

The Commissioner is required to give a copy of the report to the person who requested the review, the head of the public body concerned and a third party who was notified under section 47.

In the event that the Commissioner does not make a recommendation to alter the decision, act or failure to act, the report must include a notice to the person who requested the review of their right to appeal the decision to the Supreme Court Trial Division under section 60 and of the time limit for such an appeal [subsection 49(2)].

12.5 Response of the Head of the Public Body to the Commissioner's Report

If the Commissioner's report contains recommendations, the head of the public body concerned is required to send the Commissioner and any other person who was sent a copy of the report a written response. This response must be given within 15 days after receiving the report and must indicate the head's decision to follow the recommendation or another decision that the head considers appropriate [subsection 50(1)].

If the head of the public body decides not to follow the recommendation of the Commissioner, the head must, in writing, inform all persons who were sent a copy of the report of the right to appeal the decision to the Supreme Court Trial Division under section 60 and off the time limit for such an appeal [subsection 50(2)].

Where the head of the public body does not give written notice within 15 days, the head of the public body is considered to have refused to follow the recommendation of the Commissioner [subsection 50(3)].

12.6 Appeals to Court

The following persons may appeal a decision of the head of a public body under the Act to the Newfoundland and Labrador Supreme Court Trial Division:

- a person who applied for access to a record under Part II
- a person who is a third party notified under section 28
- a person who is requested correction of their personal information under section 35

The Commissioner may appeal a decision to refuse access to a record, or part of a record, to give access to third party information in a record, or to refuse to correct personal information to the Supreme Court Trial Division, provided the Commissioner has obtained the consent of the applicant or third party involved [subsection 61(1)].

Where an applicant or third party has appealed to the court, the Commissioner has the right to intervene as a party to that appeal [subsection 61(2)].

There is no appeal to court respecting a complaint about the collection, use or disclosure of personal information by a public body under the Act.

If a person has the right to appeal a decision under the Act to the Supreme Court Trial Division, the appeal may be made by filing an application with the court:

- within 30 days after receiving a public body's response to the Commissioner's report [subsection 60(1)]
- within 30 days after the person is notified of the decision, or the date of the act or failure to act, by the head of a public body [subsection 60(2)]

The application must name the head of the public body involved in the complaint as the respondent to the appeal [subsection 60(3)]. For example, if the complaint involved the Newfoundland and Labrador Department of Justice, the "Minister of Justice and Attorney General," and not the Government of Newfoundland and Labrador, would be named as the respondent.

The head of a public body who has refused access to a record or part of it must, on receipt of a notice of appeal by an applicant, give written notice of the appeal to a third party who:

- was notified of the request for access under section 28, or
- would have been notified under section 28 if the head had intended to give access to the record or part of the record [subsection 60(4)]

A copy of the notice of appeal shall be served by the appellant on the minister responsible for this Act (the Minister of Justice). As well, the minister responsible for this Act may become a party to an appeal by filing a notice to that effect with the Registrar of the Supreme Court [subsection 60(5) and (6)].

The record for the appeal shall be prepared by the head of the public body named as the respondent in the appeal [subsection 60(7)].

The Newfoundland and Labrador Supreme Court Trial Division is required to consider an appeal under the Act as a new matter [subsection 62(1)]. This means that the court will hear evidence, which is not restricted to the evidence which was produced before the Information and Privacy Commissioner. The court may hear evidence by affidavit [subsection 62(2)].

In general, if an appeal relates to a decision by the head of a public body to refuse to give an applicant access to all or part of a record, it is up to the head to prove that the applicant has no right of access to the record or part of the record. In other words, the head has the "burden of proving that the refusal of access is justified [subsection 64(1)]. There is, however, an exception to this general rule, in subsection 64(2):

> 64(2) On a general review of or appeal from a decision to give an applicant access to a record or part of a record containing information that relates to a third party, the burden is on the third party to prove that the applicant has no right of access to the record or part of the record.

On appeal under the Act, the court is required to take every reasonable precaution:

- to avoid disclosure of any information the head of a public body is authorized or required to refuse to disclose under Part II of the Act [paragraph 62(3)(a)], and
- to avoid disclosure as to whether information exists, if the head of a public body is authorized to refuse to confirm or deny that the information exists under subsection 12(2) of the Act [paragraph 62(3)(b)].

On hearing an appeal under the Act, the court may:

- dismiss the appeal where it is determined that the public body was required or authorized to withhold the information [paragraph 63(1)(a)], or
- order the head to give the applicant access to all or part of the record where it is determined that the public body was not required or authorized to withhold the information [paragraph 63(1)(b), and
- make any other order that the court considers appropriate where it is determined that the public body was not required or authorized to withhold the information [paragraph 63(1)(B)].

If the court finds that a record or part of a record falls within an exception to disclosure under Part II, the court cannot order the head to give the applicant access to that record or part of it, regardless of whether the exception requires or merely authorizes the head to refuse access [subsection 63(2)]. For example, where the record falls within a discretionary exception to access and the head has properly exercised his or her discretionary exception to access and the head has properly exercised his or her discretion to refuse access, the court cannot order disclosure of the record. In other words, the court cannot order a public body to exercise their discretion.

13.0 Notify ATIPP Office of Access Request

The ATIPP Office requires from all public body's information about the administration of access requests. This includes the number and nature of requests, applicant type, exceptions applied, response time, and final outcome. In addition to requiring the information to prepare the Minister's Annual Report to the House of Assembly (required under section 70 of the Act), this knowledge is required to monitor activity under the Act and to ensure consistent application by public bodies.

Some departments of government will be using an electronic database specifically designed for ATIPP and, accordingly, the statistical information required by the ATIPP Office will be supplied electronically. Users should refer to the ATIPP Database Users' Manual for instructions.

All other public bodies will fill out an ATIPP Summary Report (the Report) on completion of each access request (see Form 8 in Appendix 1).

To maintain a central record of the topics of ATIPP access requests received under Part II of the Act by all public bodies, Access and Privacy Coordinators must advise the ATIPP Office of each request as soon as it is received. Departments using the electronic ATIPP database should enter the details of the request at the earliest possible time. The Access to Privacy Coordinators of all other public bodies must fax a copy of the request to the ATIPP Office at (709) 729-5466 as soon as the request is received.

The ATIPP Summary Report is used to collect statistical information about the activity under the Act, for administrative purposes of the Newfoundland and Labrador government. The Report is also used to provide information for the Annual Report of the Minister of Justice (the Minister responsible for this Act), as required in section 70 of the Act.

The Access and Privacy Coordinator of each public body is responsible for ensuring that the Report is prepared accurately and in a timely manner for each access request. The report should be faxed or e-mailed to the ATIPP Office as soon as the response is sent to the applicant and the file is closed.

13.1 Instructions for Completing the ATIPP Summary Report

Only requests for information or records that are made pursuant to the Act should be recorded on an ATIPP Summary Report.

If an application is transferred to another public body, this should be indicated in the Final Outcome section of the Report. For statistical purposes, it will be cross-referenced with the report filed by the public body which received the transferred request to ensure the request is not counted twice.

Requests for records that do not fall under the Act, such as records of officers of the House of Assembly or of Court proceedings, should not be included. This issue is discussed in more detail in Chapter 1 under the heading "Records that do not Fall Under ATIPP."

Section 1 - Type of Applicant - Indicate the type of applicant.

Academic/Researcher = Professional archivists, historians, members of a university/college and other requiring public body records for research purposes

Business = Private sector organization

Individual = A person making a request on their own behalf, or on behalf of another person

Interest Group = those representing community groups or special interest organizations/ associations

Legal Firm = Legal representatives or agents seeking access on behalf of clients

Media = Television, radio, print or Internet media organizations or their representatives

Other Public Body = other federal, provincial, local and international government bodies (also includes a public body within the definition of this Act and located in the province)

Political Party = any political organization, including elected officials

Section 2 - Type of Request - Indicate the type of request

General Access = Request for general information/records

Personal Information Access = Requests from an individual or a representative of that individual seeking records containing information about themselves

Correction of Personal Information = Requests from an individual or a representative of that individual requesting correction of records containing information about themselves

Section 3 - Final Outcome - Record the final outcome, or access decision, taken with respect to the request

Abandoned = Applicant has failed to provide the appropriate fees to support a request, and the request is closed

Access Denied = Records are withheld from release

Full Disclosure = All requested records are supplied to the applicant with no severing of information

Partial Disclosure = some of the record requested is being released while other information is being withheld in accordance with the exceptions listed in the Act

Will be Publicly Available within 45 Days = The information/records being sought will be published or released to the public within 45 days after the applicant's request is received if not published within 45 days, application is reactivated)

Records Do Not Exist = No records within the scope of the request have been found

Refused to Confirm or Deny Existence of a Record = Request has been denied pursuant to section 12(2)

Repetitive or Incomprehensible = The information/records being sought have been denied or have been provided to the applicant on one or more previous occasions; or the information/records being sought cannot be identified because the applicant's request is unclear and repeated attempts to clarify request with the applicant have been unsuccessful

Transferred = Request is transferred to another public body which has custody and/or control of the record sought

Withdrawn = The applicant has chosen not to pursue the request and has notified the public body.

Section 4 - Exceptions - Record each exception to disclosure applied in the access request by noting the sections and subsections of the Act.

A record or part of a record may be withheld under several exceptions. Be sure to indicate all that apply.

For example, the information being sought is the advice given to the Minister of Justice by a senior official in the Department. That advice, containing a possible course of action, potentially may be protected under 20(1) - Policy Advice or recommendations; 21-Legal Advice; and 24(1)-Disclosure Harmful to the Financial or Economic Interests of a Public Body.

Section 5 - Response Time = First, indicate whether the access request was responded to within 30 calendar days, within the extension period of 30-60, or after more than 60 days. Then, record whether or not the deadline was met.

For example, if the 30-day time limit was extended for an additional 30 days and the response was provided to the applicant on Day 60, then the response time was within 30-60 days and the deadline was met.

Response time means the total length of time that a public body takes to fully respond to a request. This includes locating the requested records, making the decision about access, doing any severing that may be required, and providing the final response to the applicant.

Section 6 - Extensions - If the 30-day time limit was extended, indicate the provision used and the number of days extension.

Section 7 - Third Party Notice - If third party notification was required because some or all of the information being sought in the access request involved a third party (or parties), indicate whether the third party consented to release, did not consent or did not respond.

Third Party Consent = Third party consents in writing to release of the records, as described by the public body.

Third Party Does Not Consent = Third party objects to release of the record and makes written representations to the public body

Third Party Does Not Respond = Third party does not respond to the notification within 20 days after it is given

Section 8 - Fees Collected - Record all fees collected from the applicant and enter the total amount

Indicate the total number of hours it took to complete the request, rounded down to the nearest hour.

Section 9 - Fee Waivers - If fees were waived, indicate which provision of the Act's Regulation was used and the amount waived.

Record the total number of hours, after the first two hours, it took to complete the request, even if fees were waived, rounded down to the nearest hour.

Section 10 - Notes if you wish to provide any additional information on the access request, use this section.

The ATIPP Summary Report should then be signed and dated, with contact details provided, and faxed to the Access and Privacy Office, Department of Justice, at fax # (709) 729-5466. Alternatively, complete the Report electronically (obtained through the ATIPP web site or from the ATIPP Office).

13.2 Federal Access to Information Requests

Under its Access to Information Act, the federal government sometimes receives access requests which require them to seek consent from a public body of Newfoundland and Labrador. If a department or other public body receives such a request for consent from the federal government, the ATIPP Office must be advised. Departments using the electronic database will use the database for this purpose. All other public bodies should complete the cover page and Part B of the ATIPP Summary Report.

The ATIPP Summary Report should then be signed and dated, with contact details provided, and faxed to the Access and Privacy Office, Department of Justice, at fax # (709) 729-5466. Alternatively, complete the Report electronically.

13.3 Reviews, Complaints and Appeals

If your public body receives notification from the Information and Privacy Commissioner that their Office has received a complaint and/or is undertaking a review of an access handled by your public body, the ATIPP Office must be advised.

Similarly, if your public body receives notice of an Appeal to the Supreme Court of a decision made by your public body, the ATIPP Office must be advised. Such an appeal may be initiated by the applicant, the Information and Privacy Commissioner or a third party.