

Municipal Government Act

progressive powers for municipalities

Introductory Guide to Part XX Freedom of Information and Protection of Privacy

- Revised -

Topic: This guide provides an introduction to Part XX of the *Municipal Government Act* for use by Municipalities, Villages, Municipal Bodies, Service Commissions, Municipal CAOs, Clerks and Chairs of Municipal Bodies and Service Commissions

Legislation: Part XX, The *Municipal Government Act*

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Table of Contents

Introduction	1
Application of Part XX	1
Administration	2
Definitions	3
Responsible Officers	4
Delegation to Administrators	5
Transferring Applications to a Municipal Body	6
Intergovernmental Relations	6
Conclusions	7
Review Officer	7
Amendments to Freedom of Information and Protection of Privacy Act	8

INTRODUCTION

Effective April 1, 1999, municipalities, villages, municipal service commissions and municipal bodies will operate under the *Municipal Government Act*, Chapter 18, Statutes of Nova Scotia, 1998. The Act is divided into twenty-three Parts. Part XX (twenty) is entitled Freedom of Information and Protection of Privacy. It essentially copies the Act that is applicable to the provincial government, the *Freedom of Information and Protection of Privacy Act*, with necessary revisions to make it applicable to municipalities and municipal bodies.

This guide will focus on the aspects of Part XX that are specific to municipalities.

Two other guides, one concerning day to day administration of the Act (based on the Province's guide) and one concerning law enforcement records, are being prepared separately. These will deal with privacy issues protected by the new Act, as well as with the access process.

Part XX will provide municipalities, municipal bodies and the public with greater certainty about which records are public and which are private, what fees can be charged and how to settle disputes. The overall intent of Part XX is to facilitate access to information.

APPLICATION OF PART XX

It is possible that all public bodies in Nova Scotia will eventually be governed by freedom of information and protection of privacy legislation. If all bodies operate under similar rules, there will be greater certainty for both the bodies and the public.

Part XX is a step in that direction and it was written not only to apply to municipalities, as that term is generally understood, but also to villages, service commissions and other "municipal bodies". If a body is not sure whether it is "a municipal body", reference should be made to the material below. If a body receives an application but believes that it is not under Part XX of the Act, and not under the *Provincial Freedom of Information and Protection of Privacy Act*, it may indicate this to the applicant. The applicant should also be informed that he or she may appeal to the Review Officer (who has recommendation powers), or to a Court. The Review Officer's name, address, etc. is found at the end of this guide.

ADMINISTRATION

The rules appear to be complex and difficult because they are drafted to apply to a number of different situations. Experience has shown that a little practice clarifies the procedures substantially. Attention to time lines and the specific requirements for responding to applications for information is important both in managing the responsibility and to avoid problems of conflict with the law.

A set of initial training sessions, supplemented by continuing training opportunities, will address the essentials of the process. Advice can also be obtained from those working with the same provisions at the provincial level. The responsible administrator must also have a working familiarity with the provisions of the Act and be completely conversant with the guides that will be provided.

For clarity within your organization and for potential applicants, it is necessary that one or more staff people be designated as those responsible not only to process applications, but also to learn the appropriate procedures to ensure processing proceeds smoothly. These individuals should be at a relatively senior level, knowledgeable in the types of records held by your municipality, and possessing the capacity and administrative support to respond to applications.

There are several ways in which administration of the Act could be approached.

It is important that there be one or more staff people designated to learn the procedures set out in Part XX and handle the inquiries and applications so that applications are processed smoothly. One or more staff people with knowledge of the records and the organization should be appointed as “administrators” of Part XX. Some divisions of a municipality may already receive a number of requests for information, such as the police department, building inspection, human resources, tax collection, planning services, etc.

It may be that larger municipalities will want an administrator for each of these departments. If a municipality has a police department, it should have an administrator who is familiar with law enforcement issues as there are special rules that apply in this area.

If a municipality appoints more than one administrator, it should consider appointing one of the administrators or someone to be a “coordinator”. The coordinator could assign requests, assist administrators, communicate with other staff, assist in seeing the responses from various departments are similar, liaise with the provincial coordinator and administrators, etc.

DEFINITIONS

Part XX commences with Section 461 which provides definitions for use exclusively in working with Part XX. Section 3 of the *Municipal Government Act* provides definitions for use with all of the Act and should be referred to in respect to words that are not defined in Section 461.

Definitions relevant to the question of which bodies Part XX applies to, follow.

Clause 461(e) defines “municipality” as:

“municipality” means a regional municipality, town, county or district municipality, village, *service commission* or *municipal body*.

Clause 3(bn) defines “service commission”:

“service commission” means a board, commission or corporation created by, or under the authority of, an enactment that may

(i) provide services for an area, or the residents of an area, that are similar to one or more of those that may be provided by a municipality for its residents, and

(ii) levy rates and taxes, or require a municipality to levy rates and taxes, other than, or in addition to, water or electric rates fixed or approved pursuant to the *Public Utilities Act*,

but does not include a municipality, village or school board.

An example would be a rural fire district commission.

Clause 461(d) defines “municipal body” as:

“municipal body” means a committee, community council, agency, authority, board or commission, whether incorporated or not

(i) a majority of the members of which are appointed by, or
(ii) which is under the authority of,

one or more municipalities.

“Municipal body” would include municipal and joint municipal committees, community committees or citizen advisory committees, planning advisory committees, community councils (applicable only in Halifax Regional Municipality), joint service bodies created under intermunicipal service agreements (incorporated or not), municipal utilities, municipal/provincial bodies that either have a majority of their members appointed by a municipality or municipalities or are under the authority of one or more municipalities such as boards of police commissions created under the Police Act or regional library boards created under the Libraries Act, for example.

Throughout Part XX, the term “municipality” includes all of these bodies, and the same is true in this guide.

Some of these bodies are so connected with a municipality that they do not keep their own records - applications would be referred to and handled by the municipality in that case.

The bodies that keep or control their own records, have records access issues and have their own staff, should have an administrator responsible for any applications. The other bodies may have little need for an administrator or may use the municipality’s administrator.

RESPONSIBLE OFFICERS

Part XX makes the “responsible officer” responsible for receiving and handling applications for access to information.

The “responsible officer” is permitted by Section 497 to delegate to one or more officers of the municipality any or all of the powers or duties in the Part.

Clause 461(i) defines the responsible officer as:

“responsible officer” means, in the case of a

- (i) regional municipality, town or county or district municipality, the chief administrative officer, if one has been appointed or, if one has not been appointed, the clerk,
- (ii) village or service commission, the clerk,
- (iii) municipal body

- (A) a majority of the members of which are appointed by one municipality, the responsible officer for the appointing municipality,
- (B) which is under the authority of one municipality, the responsible officer for that municipality, or
- (C) which is not described in paragraph (A) or (B), the chair or presiding officer;

*Paragraph 461(iii)(C), which makes the presiding officer or chair the responsible officer, applies to only some boards, intermunicipal bodies and intergovernmental or joint bodies because it applies **only if** a majority of the members are **not** appointed by **one** municipality and the body is **not** under the authority of **one** municipality. It is intended to provide that municipal bodies that do not have a strong connection with one municipality will administer their own records and applications for information.*

DELEGATION TO ADMINISTRATORS

As indicated above, an administrator or administrators should receive and process applications. In small municipalities and villages, the appropriate administrator may be the CAO or clerk. In larger municipalities, and in municipal bodies where the presiding officer is made the responsible officer (see 461(i)(iii)(C) above), a staff person or persons usually would be appointed by delegation by the responsible officer. The delegation must be in writing and may contain conditions or requirements. In some cases, the responsible officer may want to appoint a coordinator as well as several administrators, or act as coordinator himself or herself - this would be a condition to be included in the delegation. In some cases the responsible officer may want to sign any letters that release or refuse the release of information or otherwise be informed of same

- this would be a limitation or condition to be included in the delegation.

In appointing administrators for municipal bodies, a key factor will be where the records are kept. Section 466 provides that a person may obtain a record by making a request in writing to the municipality that has custody or control of the records. A municipality may have custody of a municipal body's records while the body still has control; in which case the application may be received at either place. The municipality and municipal body should work out between them who is suitable to administer the applications. Normally, these applications will not be transferred, so there is no extra time allowed; they merely need to be directed to the appropriate administrator.

TRANSFERRING APPLICATIONS TO A MUNICIPAL BODY

Section 470 permits a responsible officer (or the designate/administrator) ten days to transfer a request for information to certain municipal bodies.

A transfer to a municipal body is authorized under Section 470, if it is a body which is **not under the authority of the municipality** and if the **municipality appoints at least one member**. This would usually be joint municipal bodies or provincial/municipal bodies, or municipal bodies that act independently of council. If this is the case, the request, and if necessary the record, may be transferred to the municipal body **if** (1) the record was produced by or for the municipal body, or (2) the municipal body was the first to obtain the record, or (3) the record is in the municipal body's custody or control.

Note that the Section does not provide for transfers to municipal bodies that are under the control of the municipality. In this case, the municipal body's responsible officer is the same as the municipality's and so a transfer is not appropriate. Directing that request to the correct administrator is all that is necessary.

Also note that the Section does not provide for transfers to municipal bodies if the municipality does not make appointments to those municipal bodies; nor for transfers to another municipality or level of government. If these types of records are in the control of the municipality, the intergovernmental provisions can be considered.

INTERGOVERNMENTAL RELATIONS

Intergovernmental sharing of information is dealt with specifically in the Act.

Section 472 allows a responsible officer to refuse to disclose information that could reasonably be expected to harm intermunicipal or intergovernmental relations or reveal information provided by other municipalities or governments in confidence, unless there is consent. Any release of information under Section 472 requires the consent of council.

Section 477 permits a responsible officer to refuse to disclose information that could reasonably be expected to harm the financial and economic interests of the municipality or another municipality or the Province.

CONCLUSION

Further details concerning the administration of Part XX will be providing through seminars and written materials. This guide is an introduction only.

The reader is cautioned that preparation of a guide containing practical suggestions must necessarily involve interpretation of legislation as it applies in general situations. Specific situations may require careful legal analysis and therefore reference should be made to the *Municipal Government Act*, other relevant statutes and to legal advisors.

REVIEW OFFICER *

Dulcie McCallum, Review Officer
Freedom of Information and Protection of
Privacy Review Office
P.O. Box 181
Halifax, N.S. B3J 2M4
Telephone: (902) 424-4684
No-Charge Dial: 1-866-243-1564
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* Review Officer information updated July 2013

AMENDMENTS TO *FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*

The Legislature has passed amendments to the *Freedom of Information and Protection of Privacy Act*. The amendments also apply to Part XX of the *Municipal Government Act*. The amendments are effective as of November 23, 1999. An unofficial version of Part XX, as amended, for a working copy has been forwarded and should be included in behind Tab 4, Part XX, **MGA Office Consolidation** of this binder. The amendments are typed in bold italics.

As this is not an official version, the official Part XX and the amending Act must be referred to for complete accuracy. For example, if the municipality gets involved in a review, appeal or litigation that involves any of the changes, please refer to Chapter 11 of the Statutes of Nova Scotia, 1999, the *Act to Amend the Freedom of Information and Protection of Privacy Act*, which will be in the Statutes of Nova Scotia, 1999 for the official version of the amendments.

Chapter 11 of the Statutes of Nova Scotia, 1999 makes the following amendments to Part XX of the MGA:

New clause 463(2)(g) removes from the application of the Part a record of representations made on behalf of a municipality to the Review Officer.

New Section 464A adds provisions respecting conflicts with other Acts.

New subsection 465(2A) requires the disclosure of all the contents of a designated, or designated class, of private-public partnership contract, including any provisions that would otherwise be exempt from disclosure by the Part, with limited exceptions.

An amendment to subsection 467(2) makes it clear that the thirty-day period during which the responsible officer must respond to a request for access to a record does not begin to run until the application is received and the applicant has, as required by the Part, specified the subject-matter of the record requested with sufficient particulars to enable an individual familiar with the subject-matter to identify the record, and has paid the required fees.

An amendment to subsection 470(1) enables the Review Officer to extend the ten-day time limit during which a request for access to a record may be transferred by the municipality that received the request to a related municipal body.

An amendment to 472(1)(a)(iv) makes it clear that the list of bodies contained in clause (a) is read disjunctively.

New subsection 479A allows a responsible officer to refuse to disclose information related to certain labour relations mediation or conciliation proceedings.

The new subsection 482(1A) describes the circumstances under which the responsible officer who receives a request for access to a record is not required to give notice of the application to a third party.

Subsection 482(2) is amended by repealing clause (c) which was inconsistent.

The new subsections 482(3A) and (3B) provide:

(3A) clarifies that the giving of notice to an applicant that a third party, who may be affected by disclosure of information, has been notified of the application does not automatically extend the time during which a decision on a request for access to information must be given; and

(3B) provides that where a request for access to a record has been made and the Part requires notice of the request to be given to a third party, the name of the applicant must not be given to the third party and the name of the third party must not be given to the applicant.

New subsection 483(3A) provides that where a notice of a request for access to a record is given to a third party who may be affected by disclosure of the record, the responsible officer to whom the request is given may give access to the record before the expiration of the time limited for the third party's response, if the third party consents to the responsible officer doing so.

The amendments to Section 490

(a) empower the Review Officer to enable any person, in addition to the applicant, the responsible officer and a third party who is entitled to notice of the request for information, to make representations to the Review Officer in the course of a review;

(b) entitle that person to a copy of the report of the Review Officer and to take an appeal from the decision under review; and

(c) make that person a party to any appeal.

The amendments to Section 491

(a) provide that where the Review Officer requires a municipality to produce a record for examination by the Review Officer, the municipality shall respond to the request within such time as is prescribed by regulation; and

(b) enables the Supreme Court to order a municipality to comply with the requirement.

New subsections 494(1A) and (1B) provide that a notice of every appeal from a decision of the responsible officer to the Supreme Court shall be given to the Minister of Justice and that the Minister of Justice has the option of becoming a party to the appeal.

New subsection 494(6) prohibits the disclosure of a record until the time for taking an appeal from the decision to disclose the record expires or the decision is upheld by the highest court to which an appeal from the decision is taken.

New subsection 500(1A) adds a further offence provision (altering a record to mislead someone) to the Part.