

Anonymity of Applicants

Sections 43(2) and 43(3) of the *Right to Information and Protection of Privacy Act*

The purpose of this guidance document is to ensure that public bodies are aware of their statutory obligations with respect to the identity of applicants during the processing of access requests. It is important that the identity of an applicant is not shared with those who do not need to know it to assist in the processing of his or her access request.

Why the identity of applicants is to be protected during the processing of an access request

The *Act* is premised on the notion that information about the public business of public bodies should be readily available to the public. In making access requests, applicants generally do not need to explain why they are looking for certain information, and in processing requests, public bodies cannot consider the reasons behind an access request or who the applicant is in determining access rights under the *Act*.

Ensuring that the identity of applicants is protected during the processing of his or her access request will help public bodies demonstrate that the request has been handled in an open and accurate manner and without bias or interference for political or other motives.

Generally, the identity of the applicant will be known by the employee or official who received the request, the Right to Information Coordinator who is tasked with processing the request, and the head of the public body (or his or her designate, if delegated to do so on the head's behalf) who signs the public body's response.

Employees and officials who are asked to assist with search efforts will need to know the content of the access request, but they have no reason or need to know who is asking for the requested information and the identity of the applicant should not be shared with them. Similarly, if a public body decides to consult with another public body or to notify third parties and seek their representations (as per ss. 34 to 36) prior to making a decision on access rights, the identity of the applicant again is not to be shared in this context.

We are aware that some public bodies have already adopted this into their processes for responding to access requests and encourage those that have not do so to ensure better compliance with the *Act*.

Relevant provisions: ss. 43(2) and 43(3)

The obligation to keep the identity of applicants confidential to the fullest extent possible during the processing of access requests is found under Part 3 of the *Act* (Protection of Privacy). Part 3 of the *Act* governs how public bodies are to handle personal information in the course of their day-to-day operations. Processing access requests is part of the public body's day-to-day operations and in our view, the identity of an applicant is her or her own personal information and can only be disclosed, including to other employees or officials of the public body, as permitted under Part 3 of the *Act*.

Division B, Restrictions on use and disclosure of personal information, sets out the circumstances where public bodies are lawfully authorized to use and disclose personal information in the conduct of their operations and provides the following as general duties of public bodies under section 43 of the *Act*:

43(2) Every use and disclosure by a public body of personal information must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used or disclosed.

43(3) A public body shall limit the use and disclosure of personal information in its custody or under its control to those of its officers, directors, employees or agents who need to know the information to carry the purpose for which the information was collected or received or to carry out a purpose authorized under section 44.

While public bodies must clearly use and disclose, in very limited circumstances, an applicant's personal information in processing and responding to his or her access request, they must also limit the personal information involved to the least amount necessary to accomplish the purpose (in this context, processing and responding to an access request). Public bodies must also limit it to those who need to know it to carry out their duties to assist in the processing of and responding to the request.

ACCESS AND PRIVACY DIVISION
DIVISION DE L'ACCÈS À L'INFORMATION ET DE LA PROTECTION DE LA VIE PRIVÉE
230-65 rue Regent St., Fredericton, NB E3B 7H8
☎ 506.453.5965/877.755.2811 📠 506.453.5963
✉ aip-aivp@gnb.ca
www.ombudnb-aip-aivp.ca