

This table prepared by the ATIPPA Review Committee Office provides a side by side comparison of ATIPPA provisions as they were prior to Bill 29 and as they are now after Bill 29. Bill 29 was passed in 2012. The reader is directed to the website of the House of Assembly to see the current consolidation of ATIPPA or a point in time version of the Act as it read immediately before Bill 29. This table is for information purposes only and is not intended to provide legal advice or to be treated as an official legal interpretation of the provisions of ATIPPA.

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Legislation before Bill 29	Legislation After Bill 29	Notes
Definition “Law Enforcement”	2012 Definition “Law Enforcement”	
<p>2. In this Act</p> <p>(i) "law enforcement" means</p> <p>(i) policing, including criminal intelligence operations, or</p> <p>(ii) investigations, inspections or proceedings that lead or could lead to a penalty or sanction being imposed;</p>	<p>2. In this Act</p> <p>(i) "law enforcement" means</p> <p>(i) policing, including criminal intelligence operations, or</p> <p>(ii) investigations, inspections or proceedings conducted under the authority of or for the purpose of enforcing an enactment which lead to or could lead to a penalty or sanction being imposed under the enactment.</p>	<p>Repeal and substitution of subparagraph 2(i)(ii).</p> <p>This follows a recommendation from the Cummings Review, further to a recommendation from the Information and Privacy Commissioner’s Office, that the definition of “law enforcement” not include investigations conducted in relation to matters such as harassment or workplace disputes, unless it is an investigation, inspection or proceeding conducted under the authority of or for the purpose of enforcing an enactment.</p>
Definition “Personal Information”	2012 Definition “Personal Information”	
<p>2. In this Act</p> <p>(o) "personal information" means recorded information about an identifiable individual, including</p>	<p>2. In this Act</p> <p>(o) "personal information" means recorded information about an identifiable individual, including</p>	<p>Repeal and substitution of subparagraph 2(o)(ix).</p> <p>The definition of “personal information” refers to recorded information about an identifiable individual, including the</p>

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Legislation before Bill 29	Legislation After Bill 29	Notes
<ul style="list-style-type: none"> (i) the individual's name, address or telephone number, (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations, (iii) the individual's age, sex, sexual orientation, marital status or family status, (iv) an identifying number, symbol or other particular assigned to the individual, (v) the individual's fingerprints, blood type or inheritable characteristics, (vi) information about the individual's health care status or history, including a physical or mental disability, (vii) information about the individual's educational, financial, criminal or employment status or history, (viii) the opinions of a person about the individual, and 	<ul style="list-style-type: none"> (i) the individual's name, address or telephone number, (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations, (iii) the individual's age, sex, sexual orientation, marital status or family status, (iv) an identifying number, symbol or other particular assigned to the individual, (v) the individual's fingerprints, blood type or inheritable characteristics, (vi) information about the individual's health care status or history, including a physical or mental disability, (vii) information about the individual's educational, financial, criminal or employment status or history, (viii) the opinions of a person about the individual, and 	<p>individual's personal views or opinions.</p> <p>Under the previous definition, two people could claim ownership of personal information at the same time: both the person who held the opinion and the person who is the subject of the opinion.</p> <p>As a result of the 2012 legislation, a recorded opinion about someone else is not personal information of the individual who holds the opinion.</p>

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Legislation before Bill 29	Legislation After Bill 29	Notes
(ix) the individual's personal views or opinions;	(ix) the individual's personal views or opinions, <u>except where they are about someone else;</u>	
Application	2012 Application	
<p>5. (1) This Act applies to all records in the custody of or under the control of a public body but does not apply to</p> <p>(a) - (k)</p>	<p>5. (1) This Act applies to all records in the custody of or under the control of a public body but does not apply to</p> <p>(a) - (k) [no change]</p> <p><u>(l) a record relating to an investigation by the Royal Newfoundland Constabulary if all matters in respect of the investigation have not been completed; or</u></p> <p><u>(m) a record relating to an investigation by the Royal Newfoundland Constabulary that would reveal the identity of a confidential source of information or reveal information provided by that source with respect to a law enforcement matter.</u></p>	<p>Addition of paragraphs (l) and (m) in an amendment to subsection 5(1).</p> <p>Section 5 addresses the records to which the Act does not apply.</p> <p>As a result of the 2012 legislation, there are two additional types of records to which the Act does not apply:</p> <ul style="list-style-type: none"> • a record relating to an ongoing police investigation; • a record relating to a police investigation that would reveal the identity of a confidential police informant or reveal information provided by that source with respect to a law enforcement matter.

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Legislation before Bill 29	Legislation After Bill 29	Notes
Right of access	2012 Right of access	
<p>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 a public body, including a record containing personal information about the applicant.</p> <p>(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.</p> <p>(3) The right of access to a record is subject to the payment of a fee required under section 68.</p>	<p>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 a public body, including a record containing personal information about the applicant.</p> <p>(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.</p> <p>(3) The right of access to a record is subject to the payment of a fee required under section 68.</p> <p>(4) The right of access does not extend</p> <p>(a) to a record created solely for the purpose of briefing a member of the Executive Council with respect to assuming responsibility for a department, secretariat or agency; or</p> <p>(b) to a record created solely for the purpose of briefing a member of the Executive Council in</p>	<p>Addition of subsections (4), (5) and (6) in an amendment to section 7.</p> <p>As a result of the 2012 legislation, the right of access to briefing materials prepared for ministers</p> <ul style="list-style-type: none"> on assuming responsibility for a department, is limited to those briefing materials older than 5 years from the date of the appointment of the minister to the new department; in preparation for a sitting of the House of Assembly, is limited to those briefing materials older than 5 years from the beginning of the sitting of the House of Assembly for which the record was prepared.

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Legislation before Bill 29	Legislation After Bill 29	Notes
	<p><u>preparation for a sitting of the House of Assembly.</u></p> <p><u>(5) Paragraph (4)(a) does not apply to a record described in that paragraph if 5 years or more have elapsed since the member of the Executive Council was appointed as the minister responsible for the department, secretariat or agency.</u></p> <p><u>(6) Paragraph (4)(b) does not apply to a record described in that paragraph if 5 years or more has elapsed since the beginning of the sitting with respect to which the record was prepared.</u></p>	
Published material	2012 Published material	
<p>14. (1) The head of a public body may refuse to disclose a record or part of a record that</p> <p>(a) is published, <u>and available for purchase by the public</u>; or</p> <p>(b) is to be published or released to the public within 45 days after the applicant's request is received.</p>	<p>14. (1) The head of a public body may refuse to disclose a record or part of a record that</p> <p>(a) is published <u>and is available to the public without cost or for purchase</u>; or</p> <p>(b) is to be published or released to the public within 45 days after the applicant's request is received.</p>	<p>Repeal and substitution of paragraph 14(1)(a).</p> <p>Prior to 2012, a published document available for purchase by the public may be refused. As a result of the 2012 legislation, a published record that is available to the public with or without cost may be refused.</p>

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Legislation before Bill 29	Legislation After Bill 29	Notes
<p align="center">Extension of time limit</p>	<p align="center">2012 Extension of time limit</p>	
<p>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</p> <p>(a) the applicant does not give sufficient details to enable the public body to identify the requested record;</p> <p>(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</p> <p>(c) notice is given to a third party under section 28 .</p> <p>(2) Where the time limit for responding is extended under subsection (1), the head of the public body shall notify the applicant in writing</p> <p>(a) of the reason for the extension;</p> <p>(b) when a response can be expected; and</p> <p><u>(c) that the applicant may make a</u></p>	<p>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</p> <p>(a) the applicant does not give sufficient details to enable the public body to identify the requested record;</p> <p>(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;</p> <p>(c) notice is given to a third party under section 28; or</p> <p><u>(d) more time is needed to consult with a third party or other public body before the head can decide whether or not to give the applicant access to a requested record.</u></p> <p>(2) <u>In addition to the authority under subsection (1), with the approval of the commissioner, the head of a public body may extend the time for responding to a</u></p>	<p>Repeal and substitution of section 16.</p> <p>In the legislation prior to and after 2012, the head of a public body is given the ability, in specified circumstances, to extend the time limit for responding to a request without the approval of the commissioner for up to an additional 30 days.</p> <p>Heads of public bodies are required to notify the applicant of the reasons for the extension, when a response can be expected, and that the applicant may make a complaint to the commissioner about the extension.</p> <p>There are two new elements added to this section in the 2012 legislation. First, the grounds on which the time limit may be extended without the approval of the commissioner have been expanded to include the circumstance where the public body needs more time to consult with a third party or other public body. This is provided in paragraph (1)(d).</p> <p>Secondly, in the 2012 legislation, there is a new subsection (2). It provides for extensions of time longer than 30 days with the approval of the commissioner, in</p>

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<p>complaint under section 44 to the commissioner about the extension.</p>	<p><u>request as follows:</u></p> <p>(a) <u>where one or more of the circumstances described in subsection (1) apply for a period of longer than the 30 days permitted under that subsection;</u></p> <p>(b) <u>where multiple concurrent requests have been made by the same applicant or multiple concurrent requests have been made by 2 or more applicants who work for the same organization or who work in association with each other; or</u></p> <p>(c) <u>where the commissioner otherwise considers that it is fair and reasonable to do so, as the commissioner considers appropriate.</u></p> <p>(3) Where the time limit for responding is extended under subsection (1) <u>or (2)</u>, the head of the public body shall notify the applicant in writing</p> <p>(a) of the reason for the extension; and</p> <p>(b) when a response can be expected.</p>	<p>particular circumstances.</p> <p>The requirement for the head of the public body to notify the applicant of the reasons for the extension and when a response can be expected applies in the 2012 legislation to an extension of time that occurs with or without the approval of the commissioner.</p> <p>Subsection (4) is similar to the former paragraph (2)(c). Where the time limit is extended without the approval of the commissioner, the head of a public body is required to notify the applicant that the applicant may make a complaint to the commissioner about the extension.</p>

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	<p>(4) In addition to the requirements of subsection (3), where the time limit has been extended without the approval of the commissioner, the head of the public body shall notify the applicant in writing that the applicant may make a complaint under section 44 to the commissioner.</p>	
Cabinet confidences	2012 Cabinet confidences	
<p>18. (1) The head of a public body shall refuse to disclose to an applicant information that would reveal the substance of deliberations of Cabinet, including advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Cabinet.</p> <p>(2) Subsection (1) does not apply to</p> <p>(a) information in a record that has been in existence for 20 years or more; or</p> <p>(b) information in a record of a decision made by the Cabinet on an appeal under an Act.</p>	<p>18.(1) In this section</p> <p>(a) "cabinet record" means</p> <p>(i) advice, recommendations or policy considerations submitted or prepared for submission to the Cabinet,</p> <p>(ii) draft legislation or regulations submitted or prepared for submission to the Cabinet,</p> <p>(iii) a memorandum, the purpose of which is to present proposals or recommendations to the Cabinet,</p> <p>(iv) a discussion paper, policy analysis, proposal, advice or</p>	<p>Repeal and substitution of section 18.</p> <p>Prior to 2012, the legislation required a public body to refuse to disclose a record that would reveal the substance of deliberations of Cabinet, including advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to Cabinet.</p> <p>Subsection (1) of the 2012 legislation provides a definition of a Cabinet record. Subparagraphs (a)(i) and (ii) repeat the wording "advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Cabinet" found in the former subsection (1). The remainder of the definition is similar to that found in the <i>Management of Information Act</i>.</p>

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	<p><u>briefing material, including all factual and background material prepared for the Cabinet.</u></p> <p>(v) <u>an agenda, minute or other record of Cabinet recording deliberations or decisions of the Cabinet.</u></p> <p>(vi) <u>a record used for or which reflects communications or discussions among ministers on matters relating to the making of government decisions or the formulation of government policy.</u></p> <p>(vii) <u>a record created for or by a minister for the purpose of briefing that minister on a matter for the Cabinet.</u></p> <p>(viii) <u>a record created during the process of developing or preparing a submission for the Cabinet, or</u></p> <p>(ix) <u>that portion of a record which contains information about the contents of a record within a class of information referred to in subparagraphs (i) to (viii);</u></p>	<p>Paragraphs 18(1)(b) to (d) describe Cabinet records as one of three categories: (b) a discontinued Cabinet record; (c) an official Cabinet record; and (d) a supporting Cabinet record. The public body is required under subsection (2) to refuse to disclose all three categories of Cabinet record.</p> <p>Under subsection (3), the commissioner has the power to review the refusal of a Cabinet record, except one that has been certified as an official Cabinet record.</p> <p>Under subsection (6), an applicant may appeal the refusal of a Cabinet record, except an official Cabinet record, to the commissioner or the Trial Division.</p> <p>Under subsection (7), an applicant may appeal the refusal of an official Cabinet record directly to the Trial Division.</p> <p>Where a question arises as to whether a Cabinet record is an official Cabinet record, the certificate of the Clerk of the Executive Council or his or her delegate stating that the record is an official Cabinet record is conclusive of the question. The Clerk's delegate is limited to the Deputy Clerk of the Executive Council and the Secretary of the Treasury Board.</p>

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	<p>(b) "discontinued cabinet record" means a cabinet record referred to in paragraph (a) the original intent of which was to inform the Cabinet process, but which is neither a supporting Cabinet record nor an official Cabinet record;</p> <p>(c) "official cabinet record" means a cabinet record referred to in paragraph (a) which has been prepared for and considered in a meeting of the Cabinet; and</p> <p>(d) "supporting cabinet record" means a Cabinet record referred to in paragraph (a) which informs the Cabinet process, but which is not an official cabinet record.</p> <p>(2) The head of a public body shall refuse to disclose to an applicant a Cabinet record, including</p> <p>(a) an official Cabinet record;</p> <p>(b) a discontinued Cabinet record; and</p> <p>(c) a supporting Cabinet record.</p> <p>(3) The commissioner may review the</p>	<p>As was the case in the previous legislation, the section does not apply to information in a record that has been in existence for 20 years or more, or information in a record of a decision made by the Cabinet on an appeal under an Act.</p>

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	<p>refusal of a Cabinet record by the head of a public body under subsection (2) except where the decision relates to a Cabinet record which has been certified as an official Cabinet record by the Clerk of the Executive Council or his or her delegate.</p> <p>(4) Where a question arises as to whether a Cabinet record is an official Cabinet record, the certificate of the Clerk of Executive Council or his or her delegate stating that the record is an official Cabinet record is conclusive of the question.</p> <p>(5) The delegate of the Clerk of the Executive Council referred to in subsections (3) and (4) shall be limited to the Deputy Clerk of the Executive Council and the Secretary of the Treasury Board.</p> <p>(6) An applicant may appeal a decision of the head of a public body respecting Cabinet records referred to subsection (2), except an official Cabinet record, to the commissioner or the Trial Division under section 43.</p> <p>(7) An applicant may appeal a decision of the head of a public body respecting a Cabinet record which is an official Cabinet record directly to the Trial Division.</p>	

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	<p>(8) This section does not apply to</p> <p>(a) information in a record that has been in existence for 20 years or more; or</p> <p>(b) information in a record of a decision made by the Cabinet on an appeal under an Act.</p>	
Local public body confidences	2012 Local public body confidences	
<p>19. (1) The head of a local public body may refuse to disclose to an applicant information that would reveal</p> <p>(a) a draft of a resolution, by-law or other legal instrument by which the local public body acts;</p> <p>(b) a draft of a private Bill; or</p> <p>(c) the substance of deliberations of a meeting of its elected officials or governing body or a committee of its elected officials or governing body, where an Act authorizes the holding of a meeting in the absence of the public.</p>	<p>19. (1) The head of a local public body may refuse to disclose to an applicant information that would reveal</p> <p>(a) a draft of a resolution, by-law or other legal instrument by which the local public body acts;</p> <p>(b) a draft of a private Bill; or</p> <p>(c) the substance of deliberations of a meeting of its elected officials or governing body or a committee of its elected officials or governing body, where an Act authorizes the holding of a meeting in the absence of the public.</p>	<p>Repeal and substitution of paragraph 19(2)(a).</p> <p>In the legislation both prior to and after 2012, subsection 19(1) refers to information that a local public body (i.e. a municipality, an educational body or a health care body) may refuse to disclose. However, where that information has been considered in a public meeting, the confidentiality of that information is eliminated.</p> <p>As a result of the 2012 legislation, the confidentiality of information referred to in subsection 19(1) is not eliminated if that information is only incidentally referenced in a public meeting.</p>

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<p>(2) Subsection (1) does not apply where</p> <p>(a) the draft of a resolution, by-law or other legal instrument or private Bill or the subject matter of deliberations has been considered in a meeting open to the public; or</p> <p>(b) the information referred to in subsection (1) is in a record that has been in existence for 15 years or more.</p>	<p>(2) Subsection (1) does not apply where</p> <p>(a) the draft of a resolution, by-law or other legal instrument, a private Bill or the subject matter of deliberations has been considered, other than incidentally, in a meeting open to the public; or</p> <p>(b) the information referred to in subsection (1) is in a record that has been in existence for 15 years or more.</p>	
Policy advice or recommendations	2012 Policy advice or recommendations	
<p>20. (1) The head of a public body may refuse to disclose to an applicant information that would reveal</p> <p>(a) advice or recommendations developed by or for a public body or a minister; or</p> <p>(b) draft legislation or regulations.</p>	<p>20. (1) The head of a public body may refuse to disclose to an applicant information that would reveal</p> <p>(a) advice, proposals, analyses or policy options developed by or for a public body or minister;</p> <p>(b) the contents of a formal research report or audit report that in the opinion of the head of the public body is incomplete unless no</p>	<p>Repeal and substitution of subsection 20(1).</p> <p>Prior to 2012, the head of a public body may refuse to disclose advice or recommendations developed by or for a public body or minister, draft legislation or regulations.</p> <p>As a result of the 2012 legislation, the following have been added to the list of information that may be refused:</p> <ul style="list-style-type: none"> proposals, analyses, policy options;

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	<p><u>progress has been made on it for more than 3 years;</u></p> <p>(c) <u>consultations or deliberations involving officers or employees of a public body, a minister or the staff of a minister;</u> or</p> <p>(d) draft legislation or regulations.</p>	<ul style="list-style-type: none"> the contents of an incomplete formal research or audit report (unless no progress has been made on the report in 3 years); consultations or deliberations involving officers or employees of a public body, a minister or staff of a minister.
Disclosure harmful to law enforcement	2012 Disclosure harmful to law enforcement	
<p>22. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to</p> <p>(a) interfere with, <u>disclose information about</u> or harm a law enforcement matter;</p> <p>(b) - (p).</p>	<p>22. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to</p> <p>(a) interfere with or harm a law enforcement matter;</p> <p>(b) - (p). [no change]</p>	<p>Repeal and substitution of paragraph 22(1)(a).</p> <p>This section refers to information that may be withheld from disclosure.</p> <p>The words “disclose information about” have been removed from paragraph 22(1)(a).</p>
	2012 Confidential evaluations	
<p>This section did not exist in the legislation prior to 2012.</p>	<p>22.1 <u>The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material, provided explicitly or implicitly in confidence, and compiled for the purpose</u></p>	<p>Amendment of the Act by the addition of section 22.1.</p> <p>As a result of the 2012 legislation, the head of a public body may refuse to disclose</p>

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	<p><u>of</u></p> <p>(a) <u>determining suitability, eligibility or qualifications for employment or for the awarding of contracts or other benefits by a public body;</u></p> <p>(b) <u>determining suitability, eligibility or qualifications for admission to an academic program of an educational body;</u></p> <p>(c) <u>determining suitability, eligibility or qualifications for the granting of tenure at a post-secondary educational body;</u></p> <p>(d) <u>determining suitability, eligibility or qualifications for an honour or award to recognize outstanding achievement or distinguished service; or</u></p> <p>(e) <u>assessing the teaching materials or research of an employee of a post-secondary educational body or of a person associated with an educational body.</u></p>	<p>personal information that is evaluative or opinion material, provided implicitly or explicitly in confidence and compiled for the purpose of determining suitability, eligibility or qualifications for:</p> <ul style="list-style-type: none"> • employment or for the awarding of contracts or other benefits by a public body; • for admission to an academic program; • for the granting of tenure; or • for an honour or award to recognize outstanding achievement or distinguished service. <p>As well, the head of a public body may refuse disclosure of evaluative or opinion material that is compiled for the purpose of assessing teaching materials or research of an employee of a post-secondary educational body or of a person associated with an educational body.</p>

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	<p align="center">2012 Information from a workplace investigation</p>	
<p>This section did not exist in the legislation prior to 2012.</p>	<p>22.2 (1) <u>For the purpose of this section</u></p> <p>(a) <u>"harassment" means comments or conduct which are abusive, offensive, demeaning or vexatious that are known, or ought reasonably to be known, to be unwelcome and which may be intended or unintended;</u></p> <p>(b) <u>"party" means a complainant, respondent or a witness who provided a statement to an investigator conducting a workplace investigation; and</u></p> <p>(c) <u>"workplace investigation" means an investigation related to</u></p> <p style="padding-left: 40px;">(i) <u>the conduct of an employee in the workplace,</u></p> <p style="padding-left: 40px;">(ii) <u>harassment, or</u></p> <p style="padding-left: 40px;">(iii) <u>events related to the interaction of an employee in the public body's workplace with another employee or a member of the public</u></p>	<p>Amendment of the Act by the addition of section 22.2.</p> <p>As a result of the 2012 legislation, the head of a public body is required to refuse disclosure of information from a workplace investigation to an applicant, with the exception of an applicant who is a party to the investigation.</p> <p>A party is defined as a complainant, respondent or a witness who provided a statement to an investigator conducting a workplace investigation.</p> <p>Where the applicant is a party to the workplace investigation, the public body shall disclose to the applicant information that would reveal the substance of records collected or made during the workplace investigation. There is a condition however. Where the party is a witness in a workplace investigation, the public body shall disclose only the information related to the witness' statements provided in the course of the investigation.</p>

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	<p>which may give rise to progressive discipline or corrective action by the public body employer.</p> <p>(2) The head of a public body shall refuse to disclose to an applicant information that would reveal the substance of records collected or made during a workplace investigation.</p> <p>(3) The head of a public body shall disclose to an applicant who is a party to a workplace investigation the information referred to in subsection (2).</p> <p>(4) Notwithstanding subsection (3), where a party referred to in that subsection is a witness in a workplace investigation, the head of a public body shall disclose only the information referred to in subsection (2) which relates to the witness' statements provided in the course of the investigation.</p>	

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<p align="center">Disclosure harmful to the financial or economic interests of a public body</p>	<p align="center">2012 Disclosure harmful to the financial or economic interests of a public body</p>	
<p>24. (1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of the province or the ability of the government to manage the economy, including the following information:</p> <ul style="list-style-type: none"> (a) trade secrets of a public body or the government of the province; (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of the province and that has, or is reasonably likely to have, monetary value; (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public; (d) information the disclosure of which could reasonably be expected to result in the premature disclosure 	<p>24. (1) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose</p> <ul style="list-style-type: none"> (a) trade secrets of a public body or the government of the province; (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of the province and that has, or is reasonably likely to have, monetary value; (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public; (d) information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party; (e) scientific or technical information 	<p>Repeal and substitution of subsection 24(1).</p> <p>Prior to 2012, there was a harm test for determining which information could be refused disclosure under section 24. Where the disclosure of information could reasonably be expected to harm the financial or economic interests of a public body or the government or the ability of the government to manage the economy, then a public body could refuse to disclose it. The types of information that could be refused disclosure were listed in paragraphs (a) to (e), provided that the information met the harm test.</p> <p>As a result of the 2012 legislation, the wording of subsection 24(1) has been modified such that the harm test is no longer applicable to all of the items listed in the subsection. Information which may be refused disclosure in paragraphs (g) and (h) must still meet the harm test. The withholding of information in paragraphs (a) to (f) is not dependent on the harm test.</p> <p>The list of information that may be withheld under section 24 has been expanded in the</p>

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<p>of a proposal or project or in undue financial loss or gain to a third party; and</p> <p>(e) information about negotiations carried on by or for a public body or the government of the province.</p>	<p>obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee of priority of publication;</p> <p>(f) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government of the province or a public body, or considerations which relate to those negotiations;</p> <p>(g) information, the disclosure of which could reasonably be expected to prejudice the financial or economic interest of the government of the province or a public body; or</p> <p>(h) information, the disclosure of which could reasonably be expected to be injurious to the ability of the government of the province to manage the economy of the province.</p>	<p>2012 legislation to include in paragraph (e) certain scientific or technical information obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee of priority of publication.</p> <p>The provision respecting information developed for the purpose of contractual or other negotiations by or on behalf of the government or a public body has been changed. Prior to 2012, the provision in paragraph (e), subject to the harm test, was “information about negotiations carried on by or for a public body or the government of the province”. The exception to disclosure provided in paragraph (f) of the 2012 legislation is: “positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government of the province or a public body, or considerations which relate to those negotiations”.</p> <p>Lastly, the wording in paragraph (d) has changed from “undue financial loss or gain” to “significant financial loss or gain” to a third party.</p>

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	<p align="center">2012 Disclosure harmful to labour relations interests of public body as employer</p>	
<p>This section did not exist in the legislation prior to 2012.</p>	<p>26.1(1) The head of a public body may refuse to disclose to an applicant information that would reveal</p> <ul style="list-style-type: none"> (a) labour relations information of the public body as an employer that is prepared or supplied, implicitly or explicitly, in confidence, and is treated consistently as confidential information by the public body as an employer; or (b) labour relations information the disclosure of which could reasonably be expected to <ul style="list-style-type: none"> (i) harm the competitive position of the public body as an employer or interfere with the negotiating position of the public body as an employer, (ii) result in significant financial loss or gain to the public body as an employer, or (iii) reveal information supplied to, or the report of, an arbitrator, 	<p>Amendment of the Act by the addition of section 26.1</p> <p>As a result of the 2012 legislation, some labour relations information of a public body as an employer may be withheld from disclosure.</p> <p>It does not apply to information that is in the custody or control of the Provincial Archives or the archives of a public body and that has been in existence for 50 years or more.</p>

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	<p>mediator, labour relations officer, staff relations specialist or other person or body appointed to resolve or inquire into a labour relations dispute, including information or records prepared by or for the public body in contemplation of litigation or arbitration or in contemplation of a settlement offer.</p> <p>(2) Subsection (1) does not apply where the information is in a record that is in the custody or control of the Provincial Archives of Newfoundland and Labrador or the archives of a public body and that has been in existence for 50 years or more.</p>	

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<p align="center">Disclosure harmful to business interests of a third party</p>	<p align="center">2012 Disclosure harmful to business interests of a third party</p>	
<p>27. (1) The head of a public body shall refuse to disclose to an applicant information</p> <p>(a) <u>that would reveal</u></p> <p> (i) <u>trade secrets of a third party, or</u></p> <p> (ii) <u>commercial, financial, labour relations, scientific or technical information of a third party;</u></p> <p>(b) <u>that is supplied, implicitly or explicitly, in confidence; and</u></p> <p>(c) <u>the disclosure of which could reasonably be expected to</u></p> <p> (i) harm <u>significantly</u> the competitive position or interfere <u>significantly</u> with the negotiating position of the third party,</p> <p> (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar</p>	<p>27. (1) The head of a public body shall refuse to disclose to an applicant information <u>that would reveal</u></p> <p>(a) <u>trade secrets of a third party;</u></p> <p>(b) <u>commercial, financial, labour relations, scientific or technical information of a third party, that is supplied, implicitly or explicitly, in confidence and is treated consistently as confidential information by the third party; or</u></p> <p>(c) <u>commercial, financial, labour relations, scientific or technical information the disclosure of which could reasonably be expected to</u></p> <p> (i) harm the competitive position <u>of a third party</u> or interfere with the negotiating position of the third party,</p> <p> (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be</p>	<p>Repeal and substitution of section 27.</p> <p>This section concerns the mandatory refusal of a public body to disclose certain third party information.</p> <p>Prior to 2012, there was a three-part harm test to determine what information could not be disclosed under subsection 27(1). The head of a public body was required to refuse disclosure where all three parts of the test set out in paragraphs (a), (b) and (c) were met.</p> <p>As a result of the 2012 legislation, the three-part test has been replaced by three separate approaches to determining the type of information that is captured under subsection 27(1). The 2012 legislation requires the head of a public body to refuse disclosure where only one of paragraph (a), (b) or (c) applies. Business information of a third party is now protected from disclosure under subsection 27(1) if it is of a particular class (trade secrets of a third party); if it is supplied in confidence; or if it meets the harm test set out in one of subparagraphs (i) to (d).</p>

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<p>information continue to be supplied,</p> <p>(iii) result in undue financial loss or gain to any person or organization, or</p> <p>(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.</p> <p>(2) The head of a public body shall refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.</p> <p>(3) Subsections (1) and (2) do not apply where</p> <p>(a) the third party consents to the disclosure; or</p> <p>(b) the information is in a record that is in the custody or control of the Provincial Archives of Newfoundland and Labrador or the archives of a public body and that has been in existence for 50 years or more.</p>	<p>supplied,</p> <p>(iii) result in significant financial loss or gain to any person or organization, or</p> <p>(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.</p> <p>(2) The head of a public body shall refuse to disclose to an applicant information that was obtained on a tax return, gathered for the purpose of determining tax liability or collecting a tax, or royalty information submitted on royalty returns, except where that information is non-identifying aggregate royalty information.</p> <p>(3) Subsections (1) and (2) do not apply where</p> <p>(a) the third party consents to the disclosure; or</p> <p>(b) the information is in a record that is in the custody or control of the Provincial Archives of Newfoundland and Labrador or the</p>	<p>The requirement for confidence in the 2012 legislation has the added requirement that it be treated consistently as confidential information by the third party.</p> <p>The word “significantly” has been removed from subparagraph 27(1)(c)(i). Prior to 2012, the provision was “harm significantly the competitive position or interfere significantly with the negotiating position of the third party”.</p> <p>Like section 24, the words “undue financial loss or gain” in subparagraph 27(1)(c)(iii) have been replaced by “significant loss or gain”.</p> <p>As a result of the 2012 legislation, subsection (2) has been expanded to require the head of a public body to refuse to disclose royalty information submitted on royalty returns, except where that information is non-identifying aggregate royalty information.</p>

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	archives of a public body and that has been in existence for 50 years or more.	
Notify the third party	2012 Notify the third party	
<p>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).</p> <p>(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).</p> <p>(3) The notice shall</p> <p>(a) state that a request has been made by an applicant for access to a record containing information the disclosure of which may affect the interests of the third party;</p> <p>(b) describe the contents of the record; and</p>	<p>28. (1) Where the head of a public body is considering whether to give access to a record that the head has reason to believe contains information that might be exempted from disclosure under section 27, the head shall give the third party a written notice under subsection (3).</p> <p>(2) [Rep. by 2012 c25 s14]</p> <p>(3) The notice shall</p> <p>(a) state that a request has been made by an applicant for access to a record containing information the disclosure of which may affect the interests of the third party;</p> <p>(b) describe the contents of the record; and</p> <p>(c) state that, within 20 days after the notice is given, the third party may, in writing, consent to the disclosure or may make written</p>	<p>Repeal and substitution of subsection 28(1).</p> <p>Repeal of subsection 28(2).</p> <p>Subsection (5) added in an amendment to section 28.</p> <p>This section concerns the notice that is to be given to a third party.</p> <p>Prior to 2012, the head of a public body was required to notify a third party in writing where the head intended to give an applicant access to that third party's business information. As well, the public body could, but was not obligated, give the third party written notice in the circumstance where the public body did not intend to give an applicant access to that third party's business information.</p> <p>As a result of the 2012 legislation, the head of a public body is required to notify a third party in writing where the head is</p>

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<p>(c) 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.</p> <p>(4) When notice is given under subsection (1), the head of the public body shall also give the applicant a notice stating that</p> <p>(a) the record requested by the applicant contains information the disclosure of which may affect the interests of a third party;</p> <p>(b) the third party is being given an opportunity to make representations concerning disclosure; and</p> <p>(c) a decision will be made within 30 days about whether or not to give the applicant access to the record.</p>	<p>representations to the public body explaining why the information should not be disclosed.</p> <p>(4) When notice is given under subsection (1), the head of the public body shall also give the applicant a notice stating that</p> <p>(a) the record requested by the applicant contains information the disclosure of which may affect the interests of a third party;</p> <p>(b) the third party is being given an opportunity to make representations concerning disclosure; and</p> <p>(c) a decision will be made within 30 days about whether or not to give the applicant access to the record.</p> <p>(5) <u>Notwithstanding subsection (1), where a third party has consented to or requested the disclosure, the third party is considered to have waived the request for notice under that subsection.</u></p>	<p><u>considering whether to give</u> an applicant access to that third party's business information.</p> <p>The new subsection (5) provides an exception: the public body is not required to give the third party written notice where that third party consents to or requests the disclosure of the information.</p> <p>Given the change in wording in subsection (1), there is no longer a need for subsection (2) and it has consequently been repealed in 2012.</p>

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<p align="center">Disclosure harmful to personal privacy</p>	<p align="center">2012 Disclosure harmful to personal privacy</p>	
<p>30. (1) The head of a public body shall refuse to disclose personal information to an applicant.</p> <p>(2) Subsection (1) does not apply where</p> <p>(a) the applicant is the individual to whom the information relates;</p> <p>(b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;</p> <p>(c) there are compelling circumstances affecting a person's health or safety and notice of disclosure is mailed to the last known address of the third party to whom the information relates;</p> <p>(d) an Act or regulation of the province or Canada authorizes the disclosure;</p> <p>(e) the disclosure is for a research or statistical purpose and is in accordance with section 41 ;</p>	<p>30. (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.</p> <p>(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where</p> <p>(a) the applicant is the individual to whom the information relates;</p> <p>(b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;</p> <p>(c) there are compelling circumstances affecting a person's health or safety and notice of disclosure is mailed to the last known address of the third party to whom the information relates;</p> <p>(d) an Act or regulation of the province or <u>of</u> Canada authorizes the disclosure;</p>	<p>Repeal and substitution of section 30.</p> <p>This section concerns the disclosure of personal information to an applicant.</p> <p>Prior to 2012, subsection (1) required the head of a public body to refuse to disclose personal information to an applicant. The circumstances in which this requirement did not apply were prescribed in subsection (2).</p> <p>As a result of the 2012 legislation, a harm test has been introduced. The test is whether the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy. If so, then the head of a public body is required to refuse to disclose the information to an applicant.</p> <p>The section sets out, as criteria for making the determination of whether disclosure of personal information would be an unreasonable invasion of a third party's personal privacy, the following:</p> <ul style="list-style-type: none"> • circumstances where the disclosure is not an unreasonable invasion of a third party's personal privacy (subsection (2));

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<p>(f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;</p> <p>(g) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;</p> <p>(h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;</p> <p>(i) public access to the information is provided under the <i>Financial Administration Act</i> ;</p> <p>(j) the information is about expenses incurred by a third party while travelling at the expense of a public body;</p> <p>(k) the disclosure reveals details of a licence, permit or a similar discretionary benefit granted to a third party by a public body, not</p>	<p>(e) the disclosure is for a research or statistical purpose and is in accordance with section 41;</p> <p>(f) the information is about a third party's position, functions or salary range as an officer, employee or member of a public body or as a member of a minister's staff;</p> <p>(g) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;</p> <p>(h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;</p> <p>(i) public access to the information is provided under the <i>Financial Administration Act</i> ;</p> <p>(j) the information is about expenses incurred by a third party while travelling at the expense of a public body;</p> <p>(k) the disclosure reveals details of a</p>	<ul style="list-style-type: none"> • circumstances where disclosure of personal information is <u>presumed to be</u> an unreasonable invasion of a third party's personal privacy (subsection (4)); • a requirement that the head of a public body consider all relevant circumstances, including those listed in paragraphs (a) to (i), when deciding under subsections 30(1) or (4) whether the disclosure would be an unreasonable invasion of a third party's personal privacy (subsection (5)). <p>There are other changes to subsection 30(2) as a result of the 2012 legislation. Prior to 2012, "remuneration" of an employee could be disclosed under paragraph (f). In the 2012 legislation, "salary range" of an employee can be disclosed.</p> <p>In the 2012 legislation there is a new paragraph 30(2)(m), which provides that the disclosure of personal information about an individual who has been dead for 20 years or more is not an unreasonable invasion of privacy.</p> <p>There is also a new provision in the 2012 legislation that disclosure is not an unreasonable invasion of a third person's</p>

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<p>including personal information supplied in support of the application for the benefit; or</p> <p>(l) the disclosure reveals details of a discretionary benefit of a financial nature granted to a third party by a public body, not including</p> <p>(i) personal information that is supplied in support of the application for the benefit, or</p> <p>(ii) personal information that relates to eligibility for income and employment support under the <i>Income and Employment Support Act</i> or to the determination of assistance levels.</p>	<p>licence, permit or a similar discretionary benefit granted to a third party by a public body, not including personal information supplied in support of the application for the benefit;</p> <p>(l) the disclosure reveals details of a discretionary benefit of a financial nature granted to a third party by a public body, not including</p> <p>(i) personal information that is supplied in support of the application for the benefit, or</p> <p>(ii) personal information that relates to eligibility for income and employment support under the <i>Income and Employment Support Act</i> or to the determination of income or employment support levels;</p> <p>(m) the personal information is about an individual who has been dead for 20 years or more; or</p> <p>(n) the disclosure is not contrary to the public interest as described in subsection (3) and reveals only the following personal information about a third party:</p>	<p>privacy when it reveals only personal information about attendance at a public event or receipt of an award through a public body. If, however, the third party refuses the disclosure of the personal information about attendance at a public event or receipt of an award, then it would be considered an unreasonable invasion of personal privacy.</p> <p>There is one further change to this section. While previous wording in paragraph 30(2)(l) referred to “assistance levels”, the 2012 legislation refers to “income or employment support levels”.</p>

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	<p>(i) attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip, or</p> <p>(ii) receipt of an honour or award granted by or through a public body.</p> <p>(3) The disclosure of personal information under paragraph (2)(n) is an unreasonable invasion of personal privacy where the third party whom the information is about has requested that the information not be disclosed.</p> <p>(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where</p> <p>(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;</p> <p>(b) the personal information is an identifiable part of a law enforcement record, except to the</p>	

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	<p>extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation;</p> <p>(c) the personal information relates to employment or educational history;</p> <p>(d) the personal information was collected on a tax return or gathered for the purpose of collecting a tax;</p> <p>(e) the personal information consists of an individual's bank account information or credit card information;</p> <p>(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;</p> <p>(g) the personal information consists of the third party's name where</p> <p style="padding-left: 40px;">(i) it appears with other personal information about the third party, or</p> <p style="padding-left: 40px;">(ii) the disclosure of the name itself would reveal personal information about the third</p>	

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	<p align="center"><u>party; or</u></p> <p>(h) <u>the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.</u></p> <p>(5) <u>In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether</u></p> <p>(a) <u>the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;</u></p> <p>(b) <u>the disclosure is likely to promote public health and safety or the protection of the environment;</u></p> <p>(c) <u>the personal information is relevant to a fair determination of the applicant's rights;</u></p> <p>(d) <u>the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;</u></p>	

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	<p>(e) the third party will be exposed unfairly to financial or other harm;</p> <p>(f) the personal information has been supplied in confidence;</p> <p>(g) the personal information is likely to be inaccurate or unreliable;</p> <p>(h) the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant; and</p> <p>(i) the personal information was originally provided to the applicant.</p>	
<p align="center">How personal information is to be collected</p>	<p align="center">2012 How personal information is to be collected</p>	
<p>33. (1) A public body shall collect personal information directly from the individual the information is about unless</p> <p>(a) another method of collection is authorized by</p> <p>(i) that individual, or</p>	<p>33. (1) A public body shall collect personal information directly from the individual the information is about unless</p> <p>(a) another method of collection is authorized by</p> <p>(i) that individual, or</p>	<p>Repeal and substitution of paragraphs 33(1)(b) and (c).</p> <p>This corrects an error by removing subparagraph (c)(v) and making it a separate paragraph (d).</p>

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<p>(ii) an Act or regulation;</p> <p>(b) the information may be disclosed to the public body under sections 39 to 42 ; or</p> <p>(c) the information is collected for the purpose of</p> <p>(i) determining suitability for an honour or award including an honorary degree, scholarship, prize or bursary,</p> <p>(ii) an existing or anticipated proceeding before a court or a judicial or quasi-judicial tribunal,</p> <p>(iii) collecting a debt or fine or making a payment,</p> <p>(iv) law enforcement, or</p> <p>(v) collection of the information is in the interest of the individual and time or circumstances do not permit collection directly from the individual.</p>	<p>(ii) an Act or regulation;</p> <p>(b) the information may be disclosed to the public body under sections 39 to 42;</p> <p>(c) the information is collected for the purpose of</p> <p>(i) determining suitability for an honour or award including an honorary degree, scholarship, prize or bursary,</p> <p>(ii) an existing or anticipated proceeding before a court or a judicial or quasi-judicial tribunal,</p> <p>(iii) collecting a debt or fine or making a payment, or</p> <p>(iv) law enforcement; or</p> <p>(d) collection of the information is in the interest of the individual and time or circumstances do not permit collection directly from the individual.</p>	

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Right to request correction of personal information	2012 Right to request correction of personal information	
<p>35. (6) Within 30 days after receiving a request under this section, the head of a public body shall</p> <p>(a) make the requested correction and notify the applicant of the correction; or</p> <p>(b) notify the application of the head's refusal to correct the record and the reason for the refusal, that the record has been annotated, and that the applicant may ask for a review of the refusal under Part V.</p>	<p>35. (6) Within 30 days after receiving a request under this section, the head of a public body shall</p> <p>(a) make the requested correction and notify the applicant of the correction; or</p> <p>(b) notify the applicant of the head's refusal to correct the record and the reason for the refusal, that the record has been annotated, and that the applicant may ask for a review of the refusal under Part V.</p>	Amendment to paragraph 35(6)(b) to delete the word "application" and add the word "applicant".
	2012 Use of personal information by post-secondary educational bodies	
This section did not exist in the legislation prior to 2012.	38.1 (1) <u>Notwithstanding section 38, a post-secondary educational body may, in accordance this section, use personal information in its alumni records for the purpose of its own fundraising activities where that personal information is reasonably necessary for the fundraising activities.</u>	Amendment of the Act by the addition of section 38.1. This new section enables a post-secondary educational body to use personal information in its alumni records to carry out its own fundraising activities. The procedures and limits on that use are also set out in the section.

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	<p>(2) In order to use personal information in its alumni records for the purpose of its own fundraising activities, a post-secondary educational body shall</p> <p>(a) give notice to the individual to whom the personal information relates when the individual is first contacted for the purpose of soliciting funds for fundraising of his or her right to request that the information cease to be used for fundraising purposes;</p> <p>(b) periodically and in the course of soliciting funds for fundraising, give notice to the individual to whom the personal information relates of his or her right to request that the information cease to be used for fundraising purposes; and</p> <p>(c) periodically and in a manner that is likely to come to the attention of individuals who may be solicited for fundraising, publish a notice of the individual's right to request that the individual's personal information cease to be used for fundraising purposes</p> <p>(i) in an alumni magazine or other</p>	

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	<p align="center"><u>publication, and</u></p> <p align="center">(ii) <u>in a newspaper of general circulation in the province.</u></p> <p align="center">(3) <u>A post-secondary educational body shall, where requested to do so by an individual, cease to use the individual's personal information under subsection (1).</u></p> <p align="center">(4) <u>The use of personal information by a post-secondary educational body under this section shall be limited to the minimum amount of information necessary to accomplish the purpose for which it is used.</u></p>	
Disclosure of personal information	2012 Disclosure of personal information	
<p>39. (1) A public body may disclose personal information only</p> <p align="center">(a) - (s).</p>	<p>39. (1) A public body may disclose personal information only</p> <p align="center">(a) - (s) [no change];</p> <p align="center">(t) <u>where the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 30;</u></p> <p align="center">(u) <u>to an officer or employee of a public body or to a minister, where the information is necessary for</u></p>	<p>Addition of paragraphs (t), (u) and (v) in an amendment to subsection 39(1).</p> <p>This section provides for the circumstances in which a public body may disclose personal information.</p> <p>The 2012 legislation added new circumstances under which a public body may disclose personal information, as follows:</p> <ul style="list-style-type: none"> • where the disclosure would not be an unreasonable invasion of a third

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	<p>the delivery of a common or integrated program or service and for the performance of the duties of the officer or employee or minister to whom the information is disclosed; or</p> <p>(v) to the surviving spouse or relative of a deceased individual where, in the opinion of the head of the public body, the disclosure is not an unreasonable invasion of the deceased's personal privacy.</p>	<p>party's personal privacy under section 30 (paragraph (t);</p> <ul style="list-style-type: none"> to an officer or employee of a public body or to a minister, where the information is necessary for the delivery of a common program or service and for the performance of duties of that officer, employee or minister (paragraph (u); to the surviving spouse or relative of a deceased individual where, in the opinion of the head of the public body, the disclosure is not an unreasonable invasion of the deceased's personal privacy (paragraph (v).
Review and appeal	2012 Review and appeal	
<p>43. (1) A person who makes a request under this Act for access to a record or for correction of personal information may ask the commissioner to review a decision, act or failure to act of the head of the public body that relates to the request.</p>	<p>43. (1) A person who makes a request under this Act for access to a record or for correction of personal information may ask the commissioner to review a decision, act or failure to act of the head of the public body that relates to the request, <u>except where the refusal by the head of the public body to disclose records or parts of them is</u></p> <p>(a) <u>due to the record being an official cabinet record under section 18; or</u></p> <p>(b) <u>based on solicitor and client</u></p>	<p>Repeal and substitution of subsection 43(1).</p> <p>Prior to 2012, the law permitted a person who requested access to or correction of a record to ask the Commissioner to review any decision, action or failure to act of the head of a public body.</p> <p>As a result of the 2012 legislation, the person requesting the information cannot ask the Commissioner to review the decision, action or failure to act of the head</p>

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	<p><u>privilege under section 21.</u></p>	<p>of a public body where the refusal by the head of the public body to disclose records is (a) due to the record being an official cabinet record under section 18 or (b) based on solicitor-client privilege under section 21.</p>
	<p align="center">2012 Power of a public body to disregard requests</p>	
<p>This section did not exist in the legislation prior to 2012.</p>	<p>43.1 (1) <u>The head of a public body may disregard one or more requests under subsection 8(1) or 35(1) where</u></p> <p>(a) <u>because of their repetitive or systematic nature, the requests would unreasonably interfere with the operations of the public body or amount to the abuse of the right to make those requests;</u></p> <p>(b) <u>one or more of the requests is frivolous or vexatious; or</u></p> <p>(c) <u>one or more of the requests is made in bad faith or is trivial.</u></p> <p>(2) <u>Where the head of a public body so requests, the commissioner may authorize the head of a public body to disregard a request where, notwithstanding paragraph (1)(a), that the request is not</u></p>	<p>Amendment to the Act by the addition of section 43.1.</p> <p>This section provides the head of a public body with the power to disregard certain requests in particular circumstances.</p> <p>The section also gives power to the commissioner to authorize a public body to disregard a request where in the opinion of the commissioner the request is excessively broad.</p> <p>This section requires the head of the public body to notify the person requesting of the reason for refusal and of the right of appeal to the commissioner or the Trial Division.</p>

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	<p>systematic or repetitive if, in the opinion of the commissioner, the request is excessively broad.</p> <p>(3) The head of a public body who refuses to give access to a record under this section shall notify the person who made the request, and that notice shall contain the following information:</p> <ul style="list-style-type: none">(a) that the request is refused because the head of the public body is of the opinion that the request falls under subsection (1) and of the reasons for the refusal;(b) that the request is refused because the commissioner has authorized the head of a public body to disregard a request under subsection (2) and of the reasons for the refusal; and(c) that the person who made the request may appeal to the commissioner or the Trial Division under section 43.	

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Complaints	2012 Complaints	
<p>Subsection (2) did not exist prior to 2012.</p>	<p>44. (2) The commissioner may investigate and attempt to resolve complaints by an individual who believes on reasonable grounds that his or her personal information has been collected, used or disclosed by a public body in contravention of Part IV.</p>	<p>Addition of subsection 44(2) in an amendment to section 44.</p> <p>This new subsection enables the commissioner to investigate a complaint by an individual who believes that his or her personal information has been collected, used or disclosed by a public body in contravention of Part IV of the Act.</p>
Informal resolution	2012 Informal resolution	
<p>46. (1) The commissioner may take steps that he or she considers appropriate to resolve a request for review under section 43 or a complaint under section 44 informally to the satisfaction of the parties and in a manner consistent with this Act.</p> <p>(2) Where the commissioner is unable to informally resolve a request for review within 30 days of the request, the commissioner shall review the decision, act or failure to act of the head of the public body and complete a report under section 48 .</p>	<p>46. (1) The commissioner may take steps that he or she considers appropriate to resolve a request for review under section 43 or a complaint under section 44 informally to the satisfaction of the parties and in a manner consistent with this Act.</p> <p>(2) Where the commissioner is unable to informally resolve a request for review within 60 days of the request, the commissioner shall review the decision, act or failure to act of the head of the public body, where he or she is satisfied that there are reasonable grounds to do so, and complete a report under section 48.</p> <p>(3) The commissioner may decide not</p>	<p>Repeal and substitution of subsection 46(2).</p> <p>Addition of subsections 46(3), (4) and (5) in an amendment to section 46.</p> <p>Prior to 2012, the commissioner had 30 days to resolve informally a request for review. The 2012 legislation increases this to 60 days.</p> <p>Prior to 2012, when a matter could not be resolved informally, the legislation required the commissioner to carry out a review and then complete a report. There was no discretion for the commissioner to choose not to conduct a review.</p>

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	<p>to conduct a review where he or she is satisfied that</p> <p>(a) the head of a public body has responded adequately to the complaint;</p> <p>(b) the complaint has been or could be more appropriately dealt with by a procedure or proceeding other than a complaint under this Act;</p> <p>(c) the length of time that has elapsed between the date when the subject-matter of the complaint arose and the date when the complaint was filed is such that a review under this Part would be likely to result in undue prejudice to a person or that a report would not serve a useful purpose; or</p> <p>(d) the complaint is trivial, frivolous, vexatious or is made in bad faith.</p> <p>(4) Where the commissioner decides not to conduct a review, he or she shall give notice of that decision, together with reasons, to the person who made the complaint and advise the person of his or her right to appeal the decision to the court under section 60 and of the time limit for</p>	<p>As a result of the 2012 legislation, the commissioner is required to carry out a review only where the commissioner is satisfied that there are reasonable grounds to do so. Subsection (3) lists the circumstances in which the commissioner is permitted to decide not to conduct a review. Where the commissioner decides not to conduct a review, the commissioner is required to give notice of the decision, with reasons, to the complainant and advise that person of the right to appeal the decision to the Trial Division.</p> <p>The new legislation provides that section 8.1 of the <i>Evidence Act</i> does not apply to a review conducted by the commissioner under this Part.</p>

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Legislation before Bill 29	Legislation After Bill 29	Notes
	<p><u>appeal.</u></p> <p>(5) Section 8.1 of the <i>Evidence Act</i> does not apply to a review conducted by the commissioner under this Part.</p>	
Representation on review	2012 Representation on review	
<p>47. (1) During an investigation, the commissioner shall give the following persons an opportunity to make representations:</p> <ul style="list-style-type: none"> (a) the person requesting the review; (b) a third party who was notified under section 28 or would have been notified had the head intended to give access; and (c) another person the commissioner considers appropriate. 	<p>47. (1) During an investigation, the commissioner shall give the following persons an opportunity to make representations:</p> <ul style="list-style-type: none"> (a) the person requesting the review; (b) a third party who was notified under section 28; (b.1) the head of the public body concerned; and (c) another person the commissioner considers appropriate. 	<p>Repeal and substitution of paragraph 47(1)(b).</p> <p>As a result of the 2012 legislation, the head of the public body is added to the list of people who may be given the opportunity to make representations to the commissioner during an investigation.</p> <p>The wording in paragraph (b) also reflects the changes to section 28 and the requirement in the 2012 legislation that the third party be notified in the circumstances where the head of the public body is considering whether to give access to that third party's information.</p>

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Time limit for review	2012 Time limit for review	
<p>48. The commissioner shall complete a review and make a report under section 49 within 90 days of receiving the request for review.</p>	<p>48. The commissioner shall complete a review and make a report under section 40 within 120 days of receiving the request for review.</p>	<p>Repeal and substitution of section 48.</p> <p>Prior to 2012, the commissioner had 90 days to complete the review and make a report. As a result of the 2012 legislation, that time has been increased to 120 days.</p>
Report	2012 Report	
<p>49. (1) On completing a review, the commissioner shall</p> <p>(a) prepare a report containing the commissioner’s findings on the review and, where appropriate, his or her recommendations and the reasons for those recommendations; and</p> <p>(b) send a copy of the report to the person requesting the review, the head of the public body concerned and a third party who was notified under section 47 .</p> <p>(2) Where the commissioner does not make a recommendation to alter the decision, act or failure to act, the report shall include a notice to the person</p>	<p>49. (1) On completing a review, the commissioner shall</p> <p>(a) prepare a report containing the commissioner’s findings on the review and, where appropriate, his or her recommendations and the reasons for those recommendations; and</p> <p>(b) send a copy of the report to the person requesting the review, the head of the public body concerned and a third party who was notified under section 47 .</p> <p>(2) Whether or not the commissioner makes a recommendation to alter the decision, act or failure to act, the report shall include a notice to the person</p>	<p>Repeal and substitution of paragraph 49(2).</p> <p>Subsection 49(2) concerns the requirement that there be a notice in the Commissioner’s report of a right to appeal.</p> <p>Prior to 2012, the requirement was limited to the circumstance where the commissioner did not make a recommendation to alter the decision, act or failure to act, of the public body.</p> <p>As a result of the 2012 legislation, the report is to contain a notice “whether or not the commissioner makes a recommendation”.</p> <p>Prior to 2012, subsection 49(2) required that a notice be given to a person of the right to appeal “the decision” to court. In</p>

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Legislation before Bill 29	Legislation After Bill 29	Notes
<p>requesting the review of the right to appeal the decision to the court under section 60 and of the time limit for an appeal.</p>	<p>requesting the review of the right to appeal the decision of the public body under section 50 to the Trial Division under section 60 and the time limit for an appeal.</p>	<p>the 2012 legislation, the subsection refers to a notice of the right to appeal “the decision of the public body under section 50”, and specifies an appeal to the Trial Division.</p>
Response of public body	2012 Response of public body	
<p>50. (1) Within 15 days after receiving a report of the commissioner, the head of a public body shall</p> <p>(a) make a decision to follow the recommendation of the commissioner or a decision that the head of the public body considers appropriate; and</p> <p>(b) give written notice of the decision to the commissioner and a person who was sent a copy of the report.</p> <p>(2) Where the head of the public body does not follow the recommendation of the commissioner, the head of the public body shall, in writing, inform the persons who were sent a copy of the report of the right to appeal the decision to the Trial Division under section 60 and of the time limit for an appeal.</p>	<p>50. (1) Within 15 days after receiving a report of the commissioner, the head of a public body shall</p> <p>(a) make a decision to follow the recommendation of the commissioner or a decision that the head of the public body considers appropriate; and</p> <p>(b) give written notice of the decision to the commissioner and a person who was sent a copy of the report.</p> <p>(2) Whether or not the head of the public body follows the recommendation of the commissioner, the head of the public body shall, in writing, inform the persons who were sent a copy of the report of the right to appeal the decision to the Trial Division under section 60 and of the time limit for an appeal.</p>	<p>Repeal and substitution of subsection 50(2).</p> <p>Prior to 2012, the notice of a right to appeal was to be given in the circumstance where the head of the public body did not follow the recommendation of the commissioner. As a result of the 2012 legislation, the notice is to be given “<u>whether or not</u> the head of the public body follows the recommendation of the commissioner”.</p>

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<p>(3) Where the head of the public body does not give notice within the time required by subsection (1), the head of the public body is considered to have refused to follow the recommendation of the commissioner.</p>	<p>(3) Where the head of the public body does not give notice within the time required by subsection (1), the head of the public body is considered to have refused to follow the recommendation of the commissioner.</p>	
<p align="center">Production of documents</p>	<p align="center">2012 Production of documents</p>	
<p>52. (1) The commissioner has the powers, privileges and immunities that are or may be conferred on a commissioner under the <u>Public Inquiries Act</u>.</p> <p>(2) 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 <u>and may examine information in a record, including personal information.</u></p> <p>(3) <u>The head of a public body shall produce to the commissioner within 14 days a record or copy of a record required under this section, notwithstanding another Act or regulations or a privilege under the law of evidence.</u></p>	<p>52. (1) The commissioner has the powers, privileges and immunities that are or may be conferred on a commissioner under the <u>Public Inquiries Act, 2006.</u></p> <p>(2) 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 <u>except any record which contains information that is solicitor and client privileged or which is an official cabinet record under section 18.</u></p> <p>(3) <u>The commissioner may examine information in a record that he or she may require under subsection (2), including personal information.</u></p> <p>(4) <u>The head of a public body shall</u></p>	<p>Repeal and substitution of section 52.</p> <p>Subsection 52(1) contains an updated cross reference to the <i>Public Inquiries Act, 2006.</i></p> <p>As a result of the 2012 legislation, there are two types of documents that the Commissioner may not require be produced during an investigation: a record which is an official cabinet record and a record which contains information that is solicitor-client privileged.</p> <p>The former subsection 52(4) has been removed. It had enabled the head of a public body to require the commissioner to examine an original document at its site when it was not practicable for a copy of a record to be made.</p>

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<p>(4) Where it is not practicable to make a copy of a record required under this section, the head of a public body may require the commissioner to examine the original at its site.</p>	<p>produce to the commissioner a record or a copy of a record required under this section within 14 days notwithstanding</p> <p>(a) another Act or regulation; or</p> <p>(b) a privilege under the law of evidence, except a privilege referred to in subsection (5).</p> <p>(5) Subsection (4) does not apply to records which are solicitor and client privileged.</p>	
<p align="center">Right of entry</p>	<p align="center">2012 Right of entry</p>	
<p>53. Notwithstanding another Act or regulation or any privilege under the law of evidence, in exercising powers or performing duties under this Act, the commissioner has the right</p> <p>(a) to enter an office of a public body and examine and make copies of a record in the custody of the public body; and</p> <p>(b) to converse in private with an officer or employee of the public body.</p>	<p>53. Notwithstanding another Act or regulation or any privilege under the law of evidence except solicitor and client privilege, in exercising powers and performing duties under this Act the commissioner has the right</p> <p>(a) to enter an office of a public body and examine and make copies of a record in the custody of the public body; and</p> <p>(b) to converse in private with an officer or employee of the public body.</p>	<p>Repeal and substitution of section 53.</p> <p>This section provides the commissioner with the right to enter an office of a public body, examine records and converse with an officer or employee.</p> <p>Prior to 2012, this right of the commissioner could be exercised despite another Act, regulation or any privilege under the law of evidence. As a result of the 2012 legislation, solicitor-client privilege is excepted.</p>

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Legislation before Bill 29	Legislation After Bill 29	Notes
<p align="center">Appeal to Trial Division</p>	<p align="center">2012 Appeal to Trial Division</p>	
<p>60. (1) Within 30 days after receiving a decision of the head of a public body under section 50 , an applicant or a third party may appeal that decision to the Trial Division.</p> <p>(2) An appeal may also be commenced by an applicant under this section in accordance with subsection 43 (3).</p> <p>(3) Where a person appeals a decision of the head of a public body, the notice of appeal shall name the head of the public body involved as the respondent.</p> <p>(4) The head of a public body who has refused access to a record or part of it shall, on receipt of a notice of appeal by an applicant, give written notice of the appeal to a third party who</p> <p>(a) was notified of the request for access under section 28 ; or</p> <p>(b) would have been notified under section 28 if the head had intended to give access to the record or part of the record.</p>	<p>60. (1) Within 30 days after receiving a decision of the head of a public body under section 50 , an applicant or a third party may appeal that decision to the Trial Division.</p> <p><u>(1.1) Where an applicant or the commissioner wishes to appeal a decision of the head of a public body who refuses to disclose</u></p> <p><u>(a) a record which is an official Cabinet record under section 18; or</u></p> <p><u>(b) a record on the basis of solicitor and client privilege under section 21,</u></p> <p><u>that appeal shall be made directly to the Trial Division within 30 days after the applicant or the commissioner received the decision.</u></p> <p><u>(1.2) The solicitor and client privilege of the records in dispute shall not be affected by the disclosure to the Trial Division.</u></p> <p>(2) An appeal may also be commenced by an applicant under this</p>	<p>Amendment of section 60 by the addition of subsections (1.1), (1.2) and (2.1). Repeal and substitution of subsection 60(5).</p> <p>This section is about appeals to the Trial Division.</p> <p>Prior to 2012, an applicant could ask the commissioner to review any refusal of a head of a public body to provide access to or correct a record, but the 2012 legislation eliminates that right on the basis that the record is an official Cabinet record or on the basis of solicitor-client privilege. The amendment to section 60 essentially substitutes a right of appeal directly to the Trial Division.</p> <p>The 2012 legislation provides that solicitor-client privilege is not affected by the disclosure of records to the Trial Division.</p> <p>Under the 2012 legislation, the copy of the notice of appeal is to be served on the commissioner as well as the minister responsible for the Act. The earlier legislation provided for service on the minister.</p>

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<p>(5) A copy of the notice of appeal shall be served by the appellant on the minister responsible for this Act.</p> <p>(6) The minister responsible for this Act may become a party to an appeal under this section by filing a notice to that effect with the Registrar of the Supreme Court.</p> <p>(7) The record for the appeal shall be prepared by the head of the public body named as the respondent in the appeal.</p> <p>(8) The practice and procedure under the <i>Rules of the Supreme Court, 1986</i> relating to appeals apply to an appeal made under this section unless they are inconsistent with this Act.</p>	<p>section in accordance with subsection 43 (3).</p> <p>(2.1) An appeal may also be commenced by an applicant under this section in accordance with subsection 43.1(3).</p> <p>(3) Where a person appeals a decision of the head of a public body, the notice of appeal shall name the head of the public body involved as the respondent.</p> <p>(4) The head of a public body who has refused access to a record or part of it shall, on receipt of a notice of appeal by an applicant, give written notice of the appeal to a third party who</p> <p>(a) was notified of the request for access under section 28 ; or</p> <p>(b) would have been notified under section 28 if the head had intended to give access to the record or part of the record.</p> <p>(5) A copy of the notice of appeal shall be served by the appellant on the commissioner and the minister responsible for this Act.</p> <p>(6) The minister responsible for this</p>	

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	<p>Act may become a party to an appeal under this section by filing a notice to that effect with the Trial Division.</p> <p style="padding-left: 40px;">(7) The record for the appeal shall be prepared by the head of the public body named as the respondent in the appeal.</p> <p style="padding-left: 40px;">(8) The practice and procedure under the <i>Rules of the Supreme Court, 1986</i> relating to appeals apply to an appeal made under this section unless they are inconsistent with this Act.</p>	
Designation of head by local public body	2012 Designation of head by local public body	
<p>66. A local public body shall, by by-law, resolution or other instrument, designate a person or group of persons as the head of the local public body for the purpose of this Act.</p>	<p>66. A local public body shall, by by-law, resolution or other instrument, designate a person or group of persons as the head of the local public body for the purpose of this Act, <u>and once designated, the local public body shall advise the minister responsible for this Act of the designation.</u></p>	<p>Repeal and substitution of section 66.</p> <p>The 2012 legislation requires the local public body to advise the minister responsible for the Act of the person who has been designated as the head of the local public body for the purpose of the Act.</p>

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Regulations	2012 Regulations	
<p>73. The Lieutenant-Governor in Council may make regulations</p> <p>(a) - (k);</p> <p>(l) providing for the retention and disposal of records by a public body if the Archives Act does not apply to the public body;</p>	<p>73. The Lieutenant-Governor in Council may make regulations</p> <p>(a) - (k); [no change]</p> <p>(l) providing for the retention and disposal of records by a public body if the Management of Information Act does not apply to the public body;</p>	<p>Repeal and substitution of paragraph 73(l).</p> <p>The 2012 legislation contains an updated cross-reference to the <i>Management of Information Act</i> (under which the <i>Archives Act</i> was repealed).</p>