

TOQUAHT NATION GOVERNMENT

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

TNS 11/2011



OFFICIAL CONSOLIDATION – CURRENT TO APRIL 15, 2014

This is a certified true copy of the consolidated Freedom of Information and Protection of Privacy Act TNS 11/2011, Current to April 15, 2014

Date: July 3rd, 2014

Signed: *Kristen Johnson*
Law Clerk

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PREAMBLE

Through the act of governing and as a treaty first nation, the Toquaht Nation assumes the responsibility of providing responsible, transparent and accountable government, blending hereditary and modern-day governing systems. In doing so, we honour our past and embrace the future ensuring the continued existence of the Toquaht Nation as a strong political, social and cultural community that aspires to grow as an organized, determined, successful and self-reliant peoples.

It is the desire of the Toquaht Nation to govern in an open and transparent manner and to promote the principles of openness and transparency by providing a right of access to all records in the custody or under the control of a Toquaht institution, subject to certainty necessary, specific and limited exceptions. The Toquaht Nation also acknowledges the need to balance the right of access with the right to personal privacy and pledges to balance those rights in a manner which is respectful to both the person requesting the information and the person the information is about.

The Toquaht Nation adopts this Act based on these values.

TOQUAHT NATION GOVERNMENT
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PART 1 - INTRODUCTORY PROVISIONS

Short title

1.1 This Act may be cited as the Freedom of Information and Protection of Privacy Act.

Executive oversight

1.2 The member of the Executive holding the community services portfolio is responsible for the executive oversight of this Act.

Application

1.3 This Act governs

- (a) access to information in the custody or under the control of a Toquaht institution, and
- (b) the collection, use and disclosure of personal information by a Toquaht institution.

Definitions

1.4 In this Act,

“applicant” means, in relation to a request under section 2.2 or 3.4, the person who made the request;

“business contact information” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email and business fax number of the individual;

“director” means the director of operations;

“law enforcement” means

- (a) policing,
- (b) investigations that lead or could lead to a penalty or sanction being imposed, or
- (c) proceedings that lead or could lead to a penalty or sanction being imposed;

“personal information” means recorded information about an identifiable individual other than business contact information;

“third party” means, in relation to a request under section 2.2 or 3.4, any person other than

- (a) the applicant, or
- (b) a Toquaht institution.

Conflict between this Act and other Toquaht laws

- 1.5** In the event of an inconsistency or conflict between this Act and any other Toquaht law, this Act prevails to the extent of the inconsistency or conflict unless the other Toquaht law expressly provides that it, or a provision of it, applies despite this Act.

PART 2 - FREEDOM OF INFORMATION

Right of access

- 2.1 (a) A person who makes a request under section 2.2 has a right of access to any record in the custody or under the control of a Toquaht institution.
- (b) The right of access under subsection (a) does not extend to information excepted from disclosure under section 2.8, but if that information can reasonably be severed from a record, the applicant has a right of access to the remainder of the record.

Request for access

- 2.2 (a) To obtain access to a record in the custody or under the control of a Toquaht institution, a person must submit a written request to the director that
- (i) provides sufficient detail to enable the director, with reasonable effort, to identify the record sought, and
- (ii) if the applicant is acting on behalf of another person, provides written proof of the applicant's authority to make the request.
- (b) The applicant may
- (i) ask for a copy of the record, or
- (ii) ask to examine the record.

Duty to assist applicants

- 2.3 (a) The director must make every reasonable effort to assist an applicant and to respond without delay to each applicant openly, accurately and completely.
- (b) The director must create a record for an applicant if
- (i) the record can be created from a machine readable record in the custody or under the control of a Toquaht institution using its normal computer hardware and software and technical expertise, and
- (ii) creating the record would not unreasonably interfere with the operations of the Toquaht institution.

Time limit for response

- 2.4 (a) The director must respond to each request under section 2.2 not later than 30 days after receiving the request.

- (b) The director is not required to comply with the time limit in subsection (a) if the time limit is extended under section 2.7.

Contents of response

- 2.5** (a) In a response under section 2.4, the director must tell the applicant
- (i) whether or not the applicant is entitled to access the record or part of the record,
 - (ii) if the applicant is entitled to access the record or part of the record, where, when and how access will be given, and
 - (iii) if access to the record or part of the record is refused,
 - (A) the reasons for the refusal and the provision of this Act on which the refusal is based, and
 - (B) that the applicant may request a review of the refusal under section 4.1.
- (b) Despite subsection (a)(iii)(A), the director may refuse to confirm or deny the existence of a record if that record contains
- (i) information described in section 2.8(a)(ii), or
 - (ii) personal information of a third party if disclosure of the existence of that information would be an unreasonable invasion of the third party's personal privacy.

Form of access

- 2.6** (a) If
- (i) an applicant is told in a response under section 2.4 that access to the record or part of the record will be given,
 - (ii) the applicant has asked for a copy of the record under section 2.2(b), and
 - (iii) the record can reasonably be reproduced,
- then
- (iv) a copy of the record or part of the record must be provided with the response, or
 - (v) the applicant must be given reasons for the delay in providing the record.

- (b) If an applicant is told in a response under section 2.4 that access to the record or part of the record will be given, and
- (i) the applicant has asked to examine the record under section 2.2(b), or
 - (ii) the record cannot reasonably be reproduced,
- then the applicant must be permitted to examine the record or part of the record at the Toquaht administrative office during normal business hours.

Extending the time limit for response

- 2.7** (a) The director may extend the time limit for responding to a request for
- (i) a period of up to 30 days, or
 - (ii) upon the approval of the Executive, a period of longer than 30 days
- if one or more of the following apply:
- (iii) the applicant does not give enough detail to enable the director to identify a requested record;
 - (iv) a large number of records are requested or an extensive search is required to locate a requested record and meeting the time limit would unreasonably interfere with the operations of the Toquaht institution; or
 - (v) more time is needed to consult with a third party before the director can decide whether or not to give the applicant access to a requested record.
- (b) If the time for responding to a request is extended under this section, the director must tell the applicant
- (i) the reason for the extension,
 - (ii) when a response can be expected, and
 - (iii) that the applicant may request a review of the extension under section 4.1.

Exceptions to disclosure

- 2.8** (a) The director may refuse to disclose information to an applicant if that disclosure would, or could reasonably be expected to,
- (i) harm the deliberative processes of a Toquaht institution,
 - (ii) harm a law enforcement matter including law enforcement by an external enforcement agency,

- (iii) reveal information that is subject to solicitor-client privilege,
 - (iv) harm intergovernmental relations or negotiations,
 - (v) harm the financial or economic interests of a Toquaht institution,
 - (vi) harm Toquaht language, culture or heritage,
 - (vii) harm individual or public safety, or
 - (viii) harm the financial or economic interests of a third party.
- (b) The director must refuse to disclose information to an applicant if that disclosure would be an unreasonable invasion of a third party's personal privacy, including the personal privacy of a deceased individual.

Information must be disclosed if in the public interest

- 2.9** (a) Despite any other provision of this Act, the director must, without delay and, if required under section 2.10, after consulting with the applicable external enforcement agency in accordance with section 2.10, disclose information in the custody or under the control of a Toquaht institution to
- (i) the public,
 - (ii) an affected group of people, or
 - (iii) an applicant
- if that disclosure is clearly in the public interest.
- (b) Subject to subsection (c), before disclosing information under subsection (a), the director must notify any third party to whom the information relates.
- (c) If it is not practicable to comply with subsection (b), the director must mail notice of the disclosure to the last known address of the third party.

Consultation with external enforcement agencies

- 2.10** If the disclosure of information is about a law enforcement matter involving an external enforcement agency, the director must, before determining whether or not to disclose all or any portion of that information under this Act,
- (a) provide notice of the applicable request under section 2.2 or proposed disclosure under section 2.9 to that external enforcement agency in sufficient detail to permit that external enforcement agency to prepare their views on the request or proposed disclosure, and

- (b) give full and fair consideration to any comments or recommendations provided by that external enforcement agency in relation to the request or proposed disclosure.

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PART 3 - PROTECTION OF PRIVACY

Purposes for which personal information may be collected

- 3.1** No personal information may be collected by or for a Toquaht institution unless the collection of that information is
- (a) necessary for a program, service or activity of a Toquaht institution,
 - (b) for the purpose of law enforcement, or
 - (c) expressly authorized under another Toquaht enactment.

How personal information must be collected

- 3.2** (a) A Toquaht institution must collect personal information or cause personal information to be collected directly from the individual the information is about unless
- (i) another method of collection is authorized by
 - (A) that individual, or
 - (B) another Toquaht enactment,
 - (ii) the collection of the information is necessary for the medical treatment of an individual and it is not possible to
 - (A) collect the information directly from that individual, or
 - (B) obtain authority under paragraph (i)(A) for another method of collection,
 - (iii) the information is collected for the purpose of
 - (A) determining the suitability of an individual for an honour or award, including an honorary degree, scholarship, prize or bursary,
 - (B) a proceeding before a court or a judicial or quasi judicial tribunal,
 - (C) collecting a debt or fine,
 - (D) making a payment, or
 - (E) law enforcement.
- (b) A Toquaht institution must ensure that an individual from whom it collects personal information or causes personal information to be collected is told

- (i) the purpose for collecting it,
 - (ii) the legal authority for collecting it, and
 - (iii) who can answer any questions the individual may have about its collection.
- (c) A Toquaht institution is not required to comply with subsection (b) if
- (i) the information is for the purpose of law enforcement, or
 - (ii) the Executive, by resolution, excuses the Toquaht institution from complying with that subsection because doing so would
 - (A) result in the collection of inaccurate information, or
 - (B) defeat the purpose or prejudice the use for which the information is collected, or
 - (C) the information
 - (I) is not required, under subsection (a), to be collected directly from the individual the information is about, and
 - (II) is not collected directly from the individual the information is about.

Accuracy of personal information

3.3 If an individual's personal information is in the custody or under the control of a Toquaht institution, the Toquaht institution must make reasonable efforts to ensure the information is accurate and complete.

Right to request correction of personal information

- 3.4**
- (a) An individual who believes there is an error or omission in his or her personal information may, by submitting a written request to the director, request that such information be corrected.
 - (b) Upon receiving a request under subsection (a), the director must correct the individual's personal information if, in the director's reasonable opinion, there is an error or omission in such information.
 - (c) The director must respond to each request under subsection (a) not later than 60 days after receiving the request.
 - (d) In a response under subsection (c), the director must tell the applicant

- (i) whether or not the applicant's personal information has been changed, and
- (ii) if the director refuses to change the applicant's personal information,
 - (A) the reasons for the refusal, and
 - (B) that the applicant may request a review of the refusal under section 4.1.

Use of personal information

3.5 A Toquaht institution must ensure that personal information in its custody or under its control is used only

- (a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose, or
- (b) if the individual the information is about has verified the information and has consented to the use.

Disclosure of personal information

3.6 (a) A Toquaht institution must ensure that personal information in its custody or under its control is disclosed only as permitted under subsection (b).

- (b) A Toquaht institution may disclose personal information in its custody or under its control as follows:
 - (i) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose;
 - (ii) if the individual the information is about has consented in writing to the disclosure;
 - (iii) in accordance with
 - (A) Part 2,
 - (B) another Toquaht enactment, or
 - (C) an enactment of British Columbia or Canada;
 - (iv) in accordance with a provision of a treaty, arrangement or agreement that
 - (A) authorizes or requires its disclosure, and
 - (B) is ratified under a Toquaht enactment or an enactment of British Columbia or Canada;

- (v) to comply with a subpoena, warrant or order issued or made by a court, person or body in Canada with jurisdiction to compel production of information;
 - (vi) to another Toquaht institution or a law enforcement agency in Canada to assist in a specific investigation
 - (A) undertaken with a view to a law enforcement proceeding, or
 - (B) from which a law enforcement proceeding is likely to result;
 - (vii) to a Toquaht official, if the information is necessary for the performance of the duties or exercise of the powers of that Toquaht official.
- (c) Despite subsection (a), upon the approval of the Executive, by resolution, a Toquaht institution may disclose personal information in its custody or under its control if
- (i) the disclosure is for a research purpose, including statistical research,
 - (ii) the disclosure is clearly in the interest of the Toquaht Nation, and
 - (iii) there is no alternative to disclosing the information in individually identifiable form.

Definition of consistent purpose

- 3.7** For the purposes of sections 3.5(a) and 3.6(b)(i), the use of personal information is consistent with the purpose for which the information was obtained or compiled if the use
- (a) has a reasonable and direct connection to that purpose, and
 - (b) is necessary for carrying out the statutory duties of the Toquaht institution that uses or discloses the information or causes the information to be used or disclosed.

PART 4 - ENFORCEMENT

Review request

- 4.1** A person who makes a request under section 2.2 or 3.4 may request a review of any decision, act or omission of the director related to that request by the Administrative Decisions Review Board.

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PART 5 - GENERAL PROVISIONS

Regulations

- 5.1** (a) The Executive may make regulations that it considers necessary or advisable for purposes under this Act.
- (b) Without limiting subsection (a), the Executive may make regulations in relation to
- (i) the retention of records, and
 - (ii) fees for copies and other services provided in relation to records.

Limitation on actions

- 5.2** (a) For certainty and pursuant to 13.35.1 and 13.35.4 of Chapter 13 Governance of the Maa-nulth Treaty, no action for damages lies or may be commenced against any Toquaht official or former Toquaht official for anything done or omitted to be done under this Act.
- (b) Despite 13.35.2, 13.35.3, 13.35.5 and 13.35.6 of Chapter 13 Governance of the Maa-nulth Treaty, no action for damages lies or may be commenced against a Toquaht institution, Toquaht official or former Toquaht official for anything done or omitted to be done under this Act if they acted in good faith in the performance of their duties or the exercise of their powers.

Offences

- 5.3** (a) A person must not willfully do any of the following:
- (i) make a false statement to, or mislead or attempt to mislead, the Executive, the director or any other individual in the performance of his or her duties or the exercise of his or her powers under this Act; or
 - (ii) obstruct the Executive, the director or any other individual in the performance of his or her duties or the exercise of his or her powers under this Act.
- (b) A person who contravenes subsection (a) commits an offence and is liable, on summary conviction, to a fine of up to \$5,000.

Commencement

- 5.4** This Act comes into force on the Maa-nulth Treaty effective date.

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LEGISLATIVE HISTORY

Freedom of Information and Protection of Privacy Act TNS 11/2011 enacted April 1, 2011

Amendments

Section	Amendment	In Force
2.8(a)(ii)	TNS 7/2014, s.4.1(a)	April 15, 2014
2.9(a)	TNS 7/2014, s.4.1(b)	April 15, 2014
2.10	TNS 7/2014, s.4.1(c)	April 15, 2014

Amending Acts:

TNS 7/2014 Enforcement Framework Amendment Act No. 1 enacted April 15, 2014

Regulations enacted under this Act: