



TSAWWASSEN FIRST NATION
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2009

FREEDOM OF INFORMATION
AND
PROTECTION OF PRIVACY ACT

Enacted on April 3, 2009

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FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

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The Legislature of Tsawwassen First Nation enacts as follows:

PART I – INTRODUCTORY PROVISIONS

Citation

- 1 This Act may be cited as the *Freedom of Information and Protection of Privacy Act*.

Definitions

- 2 In this Act
 - “**archaeological human remains**” has the same meaning as in the *Tsawwassen Culture and Heritage Act*;
 - “**chief administrative officer**” means the person appointed to that position under the *Government Organization Act*;
 - “**contact information**” means information to enable an individual to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of that individual;
 - “**employee**” includes a volunteer and a service provider;
 - “**Executive Council**” means the Executive Council of the Tsawwassen First Nation established under the *Government Organization Act*;
 - “**Judicial Council**” means the Judicial Council established under the *Administrative Review and Judicial Proceedings Act*;
 - “**law enforcement**” means policing, investigations that lead or could lead to a penalty or sanction being imposed under an enactment, or proceedings that lead or could lead to a penalty or a sanction being imposed under an enactment;
 - “**personal information**” means recorded information about an identifiable individual other than contact information;
 - “**qualifying person**” means a person other than a Tsawwassen Member whom the chief administrative officer determines to be directly and significantly affected by information contained in a record in the custody or under the control of a Tsawwassen Institution;
 - “**record**” includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or

stored by graphic, electronic, mechanical or other means but does not include a computer program or any mechanism that produces records;

“**third party**” in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than

- (a) the person who made the request, or
- (b) the Tsawwassen Government or a Tsawwassen Public Institution;

“**Tsawwassen Government**” means the government of Tsawwassen First Nation as referred to in clause 2 of Chapter 16 [*Governance*] of the Tsawwassen First Nation Final Agreement;

“**Tsawwassen Institution**” means Tsawwassen Government or a Tsawwassen Public Institution;

“**Tsawwassen Legislature**” means the Tsawwassen First Nation Legislature;

“**Tsawwassen Member**” means a Tsawwassen Individual who is enrolled as a member of Tsawwassen First Nation in accordance with Chapter 21 [*Eligibility and Enrolment*] of the Tsawwassen First Nation Final Agreement;

“**Tsawwassen Public Institution**” means a Tsawwassen public institution as defined in the Tsawwassen First Nation Final Agreement.

Purposes of this Act

- 3 (1) In fulfillment of the commitments contained in clause 45 of Chapter 16 [*Governance*] of the Tsawwassen First Nation Final Agreement, the purposes of this Act are to make Tsawwassen Institutions more accountable to Tsawwassen Members and to qualifying persons, and to protect personal privacy by
- (a) providing Tsawwassen Members and qualifying persons with a right of access to records in the custody or under the control of Tsawwassen Institutions,
 - (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves,
 - (c) preventing the unauthorized collection, use, retention, disclosure and disposal of personal information by Tsawwassen Institutions, and
 - (d) providing for an independent review of the operation of this Act.
- (2) Tsawwassen Institutions must ensure that the purposes of this Act are effectively and efficiently achieved at reasonable cost.
- (3) This Act supplements and does not replace provisions in other Tsawwassen enactments to ensure that Tsawwassen Institutions uphold Tsawwassen values and guiding principles of governance, public administration and financial administration as set out in the Tsawwassen Constitution.

Scope of this Act

- 4 (1) Subject to subsections (5) and (6), this Act applies to all records in the custody or under the control of Tsawwassen Institutions, but does not apply to records that Tsawwassen Institutions make subject to the freedom of information and protection of privacy enactment of another government by way of written agreement with that government.

- (2) This Act does not limit access to records in the custody or under the control of Tsawwassen Institutions to which Tsawwassen Members or the general public have a right of access under another Tsawwassen enactment.
- (3) This Act does not limit the information available by law to a party to a judicial or administrative proceeding under a Tsawwassen, federal, or British Columbia enactment or otherwise by law.
- (4) This Act does not limit Tsawwassen Institutions from providing access to information, other than personal information, which those Tsawwassen Institutions decide to make available to the general public.
- (5) This Act does not apply to the following:
 - (a) a record in judicial or adjudicative proceedings;
 - (b) a personal note or communication or the draft decision of a person acting in a judicial or adjudicative capacity;
 - (c) a record that is created by or for, or is in the custody or under the control of, a member or an officer of the Executive Council or of the Tsawwassen Legislature and that relates to the exercise of that individual's functions under an Act;
 - (d) a record of a question that is to be used on an examination or test;
 - (e) a record containing teaching materials or research information of employees of an educational body;
 - (f) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed.
- (6) Except as regards an individual's request relating to records containing his or her personal information, Part 2 applies only to records created on or after April 3, 2009.
- (7) Parts 1, 2, 5 and 6 of this Act apply to Tsawwassen entities named in Schedule 1 to this Act and an entity named in Schedule 1 to this Act is considered to be a Tsawwassen Institution for the purposes of these Parts."

[Amended by Bill 002-2010; Enacted on March 23, 2010]

PART 2 – FREEDOM OF INFORMATION

Information rights and how to exercise them

- 5** (1) A Tsawwassen Member or qualifying person who makes a request under section 6 has a right of access to any record in the custody or under the control of Tsawwassen Institutions, including a record containing personal information about the applicant.
- (2) For the purposes of subsection (1), the chief administrative officer may determine who constitutes a qualifying person.
- (3) The right of access to a record does not extend to information excepted from disclosure under section 13, but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record.

- (4) The right of access to a record is subject to the payment of any fee that may be required by regulation under section 34.

How to make a request

- 6 (1) To obtain access to a record, an applicant must make a written request to the chief administrative officer and provide in that request
 - (a) sufficient detail to enable the chief administrator, with a reasonable effort, to identify the record sought, and
 - (b) written proof of the applicant's authority to make the request, if the applicant is acting on behalf of another person in accordance with the regulations.
- (2) The applicant may ask for a copy of the record or ask to examine the record.

Duty to assist applicants

- 7 (1) The chief administrative officer must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.
- (2) The chief administrative officer must create a record for an applicant if
 - (a) the record can be created from a computer record in the custody or under the control of a Tsawwassen Institution, using its customary computer hardware and software and technical expertise, and
 - (b) creating the record would not unreasonably interfere with the operations of the Tsawwassen Institution.

Time limit for response

- 8 (1) The chief administrative officer must respond not later than 45 days after receiving a request described in section 6.
- (2) The chief administrative officer is not required to comply with subsection (1) if the time limit is extended under section 11.

Contents of response

- 9 (1) In a response under section 7, the chief administrative officer must tell the applicant
 - (a) whether the record exists,
 - (b) whether or not the applicant is entitled to access the record or to part of the record,
 - (c) if the applicant is entitled to access, where, when and how access will be given, and
 - (d) if access to the record or to part of the record is refused,
 - (i) the reasons for the refusal and the provision of this Act on which the refusal is based, and
 - (ii) that the applicant may ask for a review under section 28.
- (2) Despite subsection (1) (d) (i), the chief administrative officer may refuse in a response to confirm or deny the existence of a record containing

- (a) information described in section 13 (1) (c), or
 - (b) personal information of a third party if disclosure of the existence of the information would be an unreasonable invasion of that third party's personal privacy.
- (3) If a record referred to in subsection (1) (a) does not exist, the chief administrative officer must confirm to the applicant that the requested record does not exist.

How access will be given

- 10** (1) If an applicant is told under section 9 (1) that access will be given, the chief administrative officer must comply with subsection (2) or (3) of this section, as applicable.
- (2) If the applicant has asked for a copy of a record under section 6 (2) and the record can reasonably be reproduced,
- (a) a copy of that record or part of it must be provided with the response, or
 - (b) the applicant must be given reasons for the delay in providing the record.
- (3) If the applicant has asked to examine a record under section 6 (2) or if the record cannot reasonably be reproduced, the applicant must
- (a) be permitted to examine that record or part of it, or
 - (b) be given access in accordance with the regulations, including any regulation regarding photocopying fees.

Extending the time limit for response

- 11** (1) The chief administrative officer may extend the time for responding to a request for up to 45 days, if one or more of the following apply:
- (a) the applicant does not give enough detail to enable the chief administrative officer to identify a requested record;
 - (b) a large number of records are requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the Tsawwassen Institution;
 - (c) more time is needed to consult with a third party before the chief administrative officer can decide whether or not to give the applicant access to a requested record.
- (2) In addition to the authority under subsection (1), the chief administrative officer may extend the time for a reasonable period for responding to a request as follows:
- (a) if one or more of the circumstances described in subsection (1) (a) to (c) apply, for a period permitted under that subsection;
 - (b) if the chief administrative officer otherwise considers that it is fair and reasonable to do so.
- (3) If the time for responding to a request is extended under this section, the chief administrative officer must
- (a) tell the applicant the reason for the extension and when a response can be expected, and

- (b) notify the applicant that he or she may apply to the Judicial Council for a review of the extension.

Routine disclosure of records

- 12** The chief administrative officer must make every effort to regularly post on a website information generated by Tsawwassen Institutions that would be available if requested under this Act or that contains records that have been disclosed under this Act and that could reasonably be expected to be of general interest.

Exceptions

- 13** (1) Subject to subsection (2), the chief administrative officer may refuse to disclose information to an applicant if that disclosure could reasonably be expected to
- (a) divulge the substance of deliberations of the Executive Council,
 - (b) divulge policy advice or recommendations,
 - (c) harm a law enforcement matter,
 - (d) disclose information that is subject to solicitor client privilege,
 - (e) harm the intergovernmental relations or negotiations of a Tsawwassen Institution,
 - (f) harm the financial or economic interests of a Tsawwassen Institution,
 - (g) result in damage to, or interfere with, the conservation of archaeological human remains and burial objects, natural sites, or an endangered, threatened or vulnerable species, subspecies or race of plants, vertebrates or invertebrates, or any other rare or endangered living resources,
 - (h) harm the spiritual or cultural practices of the Tsawwassen First Nation, or
 - (i) harm individual or public safety.
- (2) The chief administrative officer must refuse to disclose information to an applicant information if that disclosure could reasonably be expected to
- (a) harm the commercial or financial interests of a third party, or
 - (b) invade a third party's personal privacy.

Information must be disclosed if in the public interest

- 14** (1) Whether or not a request for access is made, the chief administrative officer must, without delay, disclose to the public, to an affected group of people or to an applicant, information
- (a) about a risk of significant harm to the environment or to public health or safety, or
 - (b) the disclosure of which is, for any other reason, clearly in the public interest.
- (2) Subsection (1) applies despite any other provision of this Act.
- (3) Before disclosing information under subsection (1), the chief administrative officer must, if feasible, notify
- (a) any third party to whom the information relates, and
 - (b) the Judicial Council.

- (4) If it is not feasible to comply with subsection (3), the chief administrative officer must mail a notice of disclosure in the form prescribed by regulation
 - (a) to the last known address of the third party, and
 - (b) to the Judicial Council.

PART 3 – COLLECTION, PROTECTION AND RETENTION OF PERSONAL INFORMATION BY TSAWWASSEN INSTITUTIONS

Purpose for which personal information may be collected

- 15** Personal information may not be collected by or for a Tsawwassen Institution, unless
- (a) the collection of that information is expressly authorized under a Tsawwassen enactment,
 - (b) that information is collected for the purposes of law enforcement, or
 - (c) that information relates directly to, and is necessary for, an operating program or activity of a Tsawwassen Institution.

How personal information is to be collected

- 16** (1) A Tsawwassen Institution must collect personal information or cause personal information to be collected directly from the individual the information is about, unless
- (a) another method of collection is authorized by
 - (i) that individual, or
 - (ii) another enactment.
 - (b) the collection of the information is necessary for the medical treatment of an individual and it is not possible
 - (i) to collect the information directly from that individual, or
 - (ii) to obtain authority under paragraph (a) (i) for another method of collection,
 - (c) the information is collected for the purposes of
 - (i) determining suitability for an honour or award including a honorary degree, a scholarship, a prize or a bursary,
 - (ii) a proceeding before the Judicial Council or an adjudicative body,
 - (iii) collecting a debt or fine or making a payment, or
 - (iv) law enforcement.
- (2) A Tsawwassen Institution must ensure that an individual from whom it collects personal information or causes personal information to be collected is told
- (a) the purpose for collecting it,
 - (b) the legal authority for collecting it, and
 - (c) who can answer the individual's questions about the collection.
- (3) Subsection (2) does not apply if
- (a) the information is about law enforcement,

- (b) the Executive Council excuses a public body from complying with that subsection because doing so would
 - (i) result in collection of inaccurate information, or
 - (ii) defeat the purpose or prejudice the use for which the information is collected, or
- (c) the information
 - (i) is not required, under subsection (1), 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

- 17** If an individual's personal information is in the custody or under the control of a Tsawwassen Institution, it must make reasonable efforts to ensure that the personal information is accurate and complete.

Right to request correction of personal information

- 18** An individual who believes there is an error in his or her personal information may request the chief administrative officer to correct the information and the chief administrative officer may correct the information if he or she believes the correction is necessary.

Protection of personal information

- 19** Tsawwassen Institutions must protect the personal information in their custody or under their control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.

Unauthorized disclosure prohibited

- 20** An employee, officer or director of a Tsawwassen Institution who has access to personal information in the custody or under the control of a Tsawwassen Institution, must not disclose that information except as authorized by this Act.

Notification of unauthorized disclosure

- 21** An employee, officer or director of a Tsawwassen Institution who knows that there has been an unauthorized disclosure of personal information in their custody or under their control must immediately notify the chief administrative officer.

Application to employees and others

- 22** The requirements and restrictions established in this Part also apply to the employees, officers and directors of Tsawwassen Institutions.

**PART 4 – USE AND DISCLOSURE OF PERSONAL
INFORMATION
BY TSAWWASSEN INSTITUTIONS**

Use of personal information

- 23** Tsawwassen Institutions must ensure that personal information in their custody or under their control is used only
- (a) for the purposes for which that information was obtained or compiled, or for uses consistent with that purpose, or
 - (b) if the individual the information is about has identified the information and has consented to the use.

Disclosure of personal information

- 24** (1) Tsawwassen Institutions must ensure that personal information in their custody or under their control is disclosed only as permitted under this section.
- (2) Tsawwassen Institutions may disclose personal information in their custody or under their control as follows:
- (a) for the purpose for which it was obtained or compiled or for a use consistent with that purpose;
 - (b) if the individual the information is about has consented in writing to the disclosure of that information;
 - (c) in accordance with a Tsawwassen enactment or an enactment of British Columbia or Canada;
 - (d) in accordance with a provision of a treaty, arrangement or agreement that
 - (i) authorizes or requires its disclosure, and
 - (ii) is made under a Tsawwassen enactment or an enactment of British Columbia or Canada;
 - (e) 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;
 - (f) to a public body or law enforcement agency in Canada to assist in a specific investigation
 - (i) undertaken with a view to a law enforcement proceeding, or
 - (ii) from which a law enforcement proceeding is likely to result;
 - (g) to an officer or employee of a Tsawwassen Institution or to a member of the Executive Council, if the information is necessary for the performance of the duties of that officer or employee or that member of the Executive Council.
- (3) Despite subsection (1), if disclosure for a specific statistical or research purpose is clearly in the interest of Tsawwassen First Nation and there is no alternative to disclosing the information in individually identifiable form, the Executive Council may authorize the disclosure, subject to any restrictions or conditions that the Executive Council considers advisable.

Definition

- 25** In sections 23 and 24, “**consistent with that purpose**” means 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, functions and obligations of a Tsawwassen Institution that uses or discloses the information or causes the information to be used or disclosed.

Right of access to personal information

- 26** (1) Every individual has the right to, and must on written request be given access to view and obtain a copy of, personal information about that individual in a record in the custody or under the control of Tsawwassen Institutions if
- (a) the personal information was supplied by that individual, or
 - (b) disclosure of the information to the individual is reasonably expected not to be inconsistent with section 13 (2).
- (2) The Executive Council may establish standards, policies, procedures, and reasonable timelines considered necessary with respect to viewing and copying personal information.

Power to disregard requests

- 27** The Executive Council may, by regulation, authorize the chief administrative officer to disregard requests that would unreasonably interfere with the operations of a Tsawwassen Institution because those requests are
- (a) repetitious or systematic in nature, or
 - (b) frivolous or vexatious.

PART 5 – REVIEW AND COMPLAINTS

Right to ask for a review

- 28** (1) A person who makes a request to the chief administrative officer for access to a record or who makes a request for correction of personal information may ask the Judicial Council to review any decision, act or failure to act of the chief administrative officer that relates to that request.
- (2) The Judicial Council may delegate its authority under this Act to a member of the Judicial Council.
- (3) The Judicial Council or a member of Judicial Council exercising authority delegated under subsection (2) may appoint a mediator to assist it in the discharge of its review functions under this Act.

Improper use, etc

- 29** An individual may complain to the Judicial Council if he or she believes that a Tsawwassen Institution has improperly collected, used, disclosed, retained or disposed of his or her personal information.

How to ask for a review

- 30** (1) To ask for a review under this Part, a written request must be delivered to the Judicial Council.
- (2) A request for a review of a decision of the chief administrative officer must be delivered within
- (a) 45 days of the person asking for the review being notified of the decision; or
 - (b) a longer period allowed by the Judicial Council.
- (3) The failure of the chief administrative officer to respond in time to a request for access to a record is to be treated as a decision to refuse access to the record, but the time limit in subsection (2) (a) for delivering a request for review does not apply.

Notifying others of review

- 31** On receiving a request for a review, the Judicial Council must give a copy to
- (a) the chief administrative officer, and
 - (b) any person that the Judicial Council considers appropriate.

Inquiry by the Judicial Council

- 32** On receiving a request for a review under section 28, the Judicial Council may make any decision that the chief administrative officer may have made, including denying the request.

Denial by the Judicial Council

- 33** If the Judicial Council denies a request, it must
- (a) within 45 days of making a decision under section 28, provide the applicant with a copy of the decision, and
 - (b) provide the chief administrative officer with a copy of that decision.

PART 6 – GENERAL PROVISIONS

Regulations

- 34** The Executive Council may make regulations it considers advisable for the purposes of this Act, and, without limitation, may make regulations in respect of the following:
- (a) the normal business hours for the examination of records;
 - (b) standards to ensure reasonable access to records;
 - (c) policies and procedures to be followed for access to records;
 - (d) the destruction of records;
 - (e) categories of records and publication schemes;
 - (f) reasonable restrictions with respect to inspections of records and the protection of personal information;
 - (g) reasonable fees for copies and other services provided in respect of records;

- (h) any other matter the Executive Council considers advisable for the operation of this Act.

Relationship of this Act to other Acts

- 35** If a provision of this Act is inconsistent or in conflict with a provision of another Tsawwassen enactment, the provision of this Act prevails unless the other Tsawwassen enactment expressly provides that it, or a provision of it, applies despite this Act.

Offences and penalties

- 36** (1) A person must not willfully do any of the following:
 - (a) make a false statement to, or mislead or attempt to mislead, the Executive Council, the chief administrative officer, or any other individual in the performance of that other individual's duties, powers or functions under this Act;
 - (b) obstruct the Executive Council, the chief administrative officer, or any other individual in the performance of their duties, powers or functions under this Act;
 - (c) disclose personal information in contravention of this Act.
- (2) Any non-elected employee within a Tsawwassen Institution who contravenes any section of this Act is liable to disciplinary action to be determined by the chief administrative officer, as set out in the regulations.
- (3) A person who contravenes subsection (1) commits an offence is liable to a fine up to \$5000.

Interpretation

- 37** The *Interpretation Act* (British Columbia) applies to this Act and the regulations, unless the context or another Tsawwassen enactment otherwise requires.

Commencement

- 38** This Act comes into force on January 1, 2010.

Schedule 1

Tsawwassen Entities

1. TFN Economic Development Corporation.

[Amended by Bill 002-2010; Enacted on March 23, 2010]