

Policy on the Access to Information and Privacy (ATIP) Program

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APPLICATION

1. This is an order that applies to members of the Canadian Armed Forces and a directive that applies to employees of the Department of National Defence (DND) and to the Staff of the Non-Public Funds (NPF), Canadian Forces (CF) involved in the administration and delivery of Non-Public Property (NPP) activities, services and programs.
2. For greater certainty, this includes all non-public property vested in the commanders of units and other elements, and in the Chief of the Defence Staff (CDS) established under sections 38 to 41 of the *National Defence Act*; all activities of the Staff of the NPF, CF; and all non-public property services, programs and operations including the public Alternative Service Delivery functions assigned to be executed under the NPP accountability framework.

APPROVAL AUTHORITY

3. This policy is issued under the authority of the Director General Morale Welfare Services (DGMWS), in his capacity as the Managing Director NPP and Chief Executive Officer (CEO), Staff of the NPF, CF.

ENQUIRIES

4. Enquiries should be directed to the Canadian Forces Morale and Welfare Services (CFMWS) National Manager Access to Information and Privacy Program (NM ATIP).

DEFINITIONS

5. Consult Annex A: Definitions.

POLICY OBJECTIVE

6. The objective of this policy is to establish consistent practices and procedures for the processing of ATIP requests in order to ensure compliance and enhance the effective application of the *Access to Information Act* and the *Privacy Act* (the Acts) and their Regulations within NPP organizations.
7. Non-compliance with the Act may result in complaints and investigations by the Offices of the Information / Privacy Commissioners of Canada as well as reviews by the Federal Court.

PRINCIPLES

8. In accordance with the Acts and ATIP principles, CFMWS (NPP organizations, management and staff) shall:
 - a. operate in a centralized fashion, with delegated authorities to the CFMWS NM ATIP,

- for the processing of requests and resolution of complaints under the *Acts*;
- b. provide individuals, upon request, access to all relevant records that are under the control of NPP organizations, programs and operations, including access to their own personal information, within the statutory time limits and in a consistent manner taking into account the nature and scope of the requests, when the records are deemed releasable either in whole or in part;
 - c. comply with the “duty to assist” responsibilities, by making every reasonable effort to assist the person in connection with their request without regard to their identity, respond to the request accurately and completely, and subject to the regulation, provide timely access to the records in the format requested;
 - d. refuse to disclose information only where it clearly falls under the scope of one or more of the exemption or exclusion provisions of the *Act* and, as required, when a reasonable probable harm could result from disclosure;
 - e. disclose any part of a record that does not contain exempted or excluded information if it can reasonably be severed from the part that contains such information, provided that the document is not rendered meaningless by the severance; and
 - f. ensure that employees are aware of their obligations under the *Acts*, with an emphasis on the fact that it is a criminal offence to destroy, mutilate, alter, conceal, falsify a record or make a false record, or to direct, propose, counsel or cause any person in any manner to do so with the intent of obstructing the right of access under the *Access to Information Act*.

AUTHORITIES, ROLES AND RESPONSIBILITIES

9. Pursuant to section 73 of the *Acts*, the Minister of National Defence, as the head of the government institution, has designated the following positions within the CFMWS to exercise all his powers, duties and functions under the *Acts* concerning NPP services, programs and operations:
 - a. Managing Director NPP/ CEO of the Staff of the NPF, CF;
 - b. Chief of Staff/Vice-President Corporate Services (COS/ VP CorpSvcs); and
 - c. NM ATIP.
10. **Managing Director NPP** is responsible for the effective, well-coordinated and proactive management of the *Acts* and Regulations within NPP organizations and related or assigned services, programs and operations.
11. **CFMWS VP CorpSvcs** oversees the administration of the CFMWS ATIP Program, and represents the interests of the Program at the Executive Management Board (ExMB) and the interests of NPP to the Program.
12. **CFMWS NM ATIP** manages all activities related to the ATIP Program, in accordance with the provisions of the *Acts*, Regulations, and related Treasury Board Secretariat (TBS) policies, directives and guidelines, including the following:
 - a. making decisions and exercising discretion under the *Acts* in a fair, reasonable and impartial manner, weighing the competing public and private interest involved in the disclosure of information, and providing consistent, objective and expert advice;
 - b. limiting the disclosure of information that could directly or indirectly lead to the identification of a requester, only to individuals who have a clear need to know in the performance of their duties, unless the requester consents to the disclosure;
 - c. acting as the focal point and defending decisions under the *Acts* during investigations conducted by the Office of the Information Commissioner (OIC) and the Office of the Privacy Commissioner (OPC), assisting managers and employees during the course of such investigations and ensuring that NPP records are available, as required;

- d. promoting, developing and delivering awareness training to employees, to ensure that they understand the policies, the procedures and their responsibilities under the Acts, the Regulations and related TBS policies;
 - e. liaising and consulting with other federal institutions and central agencies such as TBS, Justice Canada, OIC and OPC, on matters of broad interest to the ATIP Program; and
 - f. coordinating with the divisions the annual update of the *Info Source*, which provides a description of NPP programs and activities and related information holdings.
13. **Associate DGMWS/Chief Operating Officer and the CFMWS Division Heads**, in their capacity as NPP functional authorities, are responsible for:
- a. reviewing the records gathered within their areas of responsibilities and signing the recommendations form or cover note to attest that (i) the records provided are relevant to the request and complete, and (ii) the recommendations made to ATIP regarding the implications of disclosure are appropriate and valid. **Note:** *This responsibility may be at the Director level;* and
 - b. reviewing release packages in response to access to information requests that may require communication products, to ensure that the organization is prepared to address any potential impact and questions resulting from the disclosure.
14. **Managers** and, where applicable, **staff** involved in the management or delivery of programs, activities and services under the NPP accountability framework are responsible for:
- a. forwarding, immediately upon receipt, all formal requests made under the *Acts* concerning NPP activities, services and programs to the CFMWS NM ATIP;
 - b. adopting a broad interpretation of the request, and promptly communicating with the CFMWS NM ATIP, in order to clarify the request;
 - c. making every reasonable effort to locate all records that are responsive to the request;
 - d. conducting a preliminary review of relevant records and formulating appropriate recommendations on the implications of disclosure (injury to individuals, third parties, government operations or other interests specified in the *Acts*), and providing contextual information regarding any related issues (litigation or other). See the ATIP Recommendations form at Annex C;
 - e. recommending, when appropriate, that the requested information be disclosed informally;
 - f. ensuring that all relevant records and completed recommendations form are forwarded to the CFMWS NM ATIP via their chain of command and division ATIP point of contact, within the prescribed timelines;
 - g. promptly reporting any potential contravention of section 67.1 of the *Access to Information Act*, in accordance with the procedure found at Annex B, if a person destroys, mutilates, alters, conceals, falsifies or makes a false record, or directs, proposes, counsels or causes any person in any manner to do so, with the intent of obstructing the right of access under the *Act*;
 - h. correcting personal information when requested by the individual to whom it relates, or if the correction cannot be made, annotating the record to reflect the request and reason, and informing any person or organization to whom the personal information has been disclosed within the previous two years of the request for correction;
 - i. providing to the CFMWS NM ATIP, within the requested deadline, complete, up-to-date and accurate descriptions of their organizations, programs and activities, as well as operational and personal information holdings under their control, for the annual update of *Info Source: Sources of Federal Government and Employee Information*;
 - j. providing direct access to information that has been prepared for general public

distribution (i.e., information pamphlets on NPP programs); and

- k. consulting with the CFMWS NM ATIP, when contracting or establishing agreements or arrangements with private or public sector organizations that involve information under the control of NPP, to ensure that NPP organizations meet the requirements of the *Acts* and that the right of access to information is not weakened. This does not apply to procurement of goods.
15. **ATIP points of contacts** coordinate the collection of information and provide guidance on the application of the *Acts* within the areas of responsibility of their division.
 16. The **CFMWS Director Communications and Marketing** and the **CFMWS Public Affairs Officer** consult the CFMWS NM ATIP and the Functional Authorities on ATIP matters that might require the preparation of communications products in response to public, media and/or other information requests.

MONITORING AND CONSEQUENCES

17. The CFMWS NM ATIP is responsible for monitoring compliance with this policy as well as the TBS policies and directives related to the administration of the *Acts* within NPP organizations.
18. Contraventions of section 67.1 of the *Access to Information Act* may result in disciplinary action, up to and including termination of employment.

REFERENCES

Acts and regulations:

- a. *Access to Information Act*
- b. *Access to Information Regulations*
- c. *Privacy Act*
- d. *Privacy Regulations*
- e. *Public Servants Disclosure Protection Act*

Treasury Board publications:

- a. *Policy on access to information*
- b. *Policy on privacy protection*
- c. Interim directive on the administration of the *Access to Information Act*
- d. Directive on privacy requests and correction of personal information
- e. *Info Source*

CFMWS policies:

- a. Policy on Privacy Practices
- b. Privacy Breach Protocol
- c. Protocol for non-administrative uses of personal information (*under development*)
- d. Non-Public Property (NPP) Network (NPP Net) Privacy Policy
- e. CFMWS Non-Public Property Functional Authority Policy

ANNEXES

Annex A: Definitions

Annex B: Procedure to report a potential contravention of section 67.1 of the *Access to Information Act*

Annex C: ATIP Recommendations form

ANNEX A: DEFINITIONS

Access request: A request for one or more records that is made under the *Access to Information Act*.

Classified information: Information related to the national interest that may qualify for an exemption or exclusion under the *Access to Information Act* or the *Privacy Act*, and the compromise of which would reasonably be expected to cause injury to the national interest.

Draft documents: Preliminary versions used to create a final document and may be used to solicit comment and input from others before a document is finalized. Draft documents are considered institutional records under the *Policy on Information Management*. Institutions must retain drafts prepared in the process of making a decision, implementing a policy, or initiating or continuing another institutional activity. Such records, including those prepared by consultants, fall within the scope of the *Act* and must be treated as any other document when they are relevant to an access request.

However, some draft documents including previously “saved” versions of electronic documents need not be retained where they are working versions not communicated beyond the individual creating them or are copies used for information or reference purposes only. Such documents may be treated as transitory records and routinely destroyed. However, if they have not been disposed of before a request is received to which they are pertinent, they must be processed as part of the request.

Delegate: An officer or employee of a government institution who has been delegated to exercise the powers, duties and functions of the head of the institution under either the *Access to Information Act* or the *Privacy Act*, or both. These powers, duties and functions can be delegated to more than one officer or employee. The access to information and privacy coordinator will often exercise delegated authority. Consultant, members of a Minister exempt staff or employee of another government institution or from the private sector cannot be delegated under the *Acts*.

Discretionary exemption: An exemption provision of the *Act* that contains the phrase “may refuse to disclose.”

Duty to assist: A duty established by subsection 4(2.1) of the *Access to Information Act*, by privacy policy and subject to regulations, for government institutions to make every reasonable effort to assist a requester, to respond to their request accurately and completely, and to provide timely access to records in the format requested without regard for the requester's identity.

Excluded information or exclusion: Information to which the *Act* does not apply as described in sections 68 and 69 of the *Access to Information Act* and sections 69 and 70 of the *Privacy Act*. Examples include library or museum material and published information such as procedure manuals posted on the Internet and tweets, and confidential documents such as Cabinet confidences.

Exemption: A provision of the *Act* that authorizes the head of a government institution to refuse to disclose records that contain certain types of information. Exemptions may be mandatory or discretionary.

Every reasonable effort: The level of effort that a fair and reasonable person would expect or would find acceptable.

Government institution: For the purposes of the *Access to Information Act* and the *Privacy Act*, any department, ministry of state, body, or office listed in Schedule I of the *Acts* as well as any parent Crown

corporation and wholly-owned subsidiary of a Crown corporation within the meaning of section 83 of the *Financial Administration Act*. These institutions must respect and fulfill all responsibilities provided for in the Acts.

Head of government institution: For the purpose of the *Access to Information Act* and the *Privacy Act*, in the case of a department or ministry of state, the head of the government institution is the minister. In other cases, the head of the institution is the person designated by an Order in Council or, if no such person is designated, the chief executive officer of the institution, whatever their specific title. For NPP entities, the Minister of National Defence is the head of the institution.

Informal request: is a request for information made to the ATIP office of a government institution that is not made or processed under the *Access to Information Act*. Fees cannot be charged for informal requests and there are no deadlines for responding. In addition, the requester has no statutory right of complaint to the Information Commissioner.

Info Source: A series of annual TBS publications aimed at the public that contain clear and detailed information on government institutions, their program responsibilities and their information holdings, for the purpose of assisting members of the public in exercising their right of access under the *Act*. *Info Source* publications also provide contact information for government institutions as well as summaries of court cases and statistics on access to information and privacy requests.

Injury: A reasonable expectation of probable harm that would result from the disclosure of information that falls under certain exemption provisions of the *Act*.

Managers: Includes supervisors, managers and executives.

Mandatory exemption: An exemption provision of the *Act* that contains the phrase “shall refuse to disclose.”

National interest: The security and the social, political and economic stability of Canada.

Need-to-know: The restriction of access to protected or classified information to individuals who need to access and know the information in order to perform their duties.

Non-Public Property: NPP is defined in section 2 of the *National Defence Act* (NDA) and includes all money and property received for or administered by or through NPP organizations, and all money and property contributed to or by CAF members for their collective benefit and welfare.

NPP Functional Authorities: Subject matter experts who are responsible for the various CFMWS NPP functions.

Personal Information: Information that is about an identifiable individual and recorded in any form, as defined in section 3 of the *Privacy Act*. Examples include information relating to race, nationality, ethnic origin, religion, age, marital status, address, education as well as the medical, criminal, financial or employment histories of an individual. Personal information also includes any identifying number or symbol, such as the social insurance number, assigned to an individual.

Personal information request (or privacy request): A request made under the *Privacy Act* by an individual to access to their personal information.

Protected information: information that may qualify for an exemption or exclusion under the *Access to Information Act* or the *Privacy Act* because its disclosure would reasonably be expected to compromise the non-national interest.

Record: Any documentary material regardless of medium or form. Examples include correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, electronic message (e-mail, SMS, pin-to-pin), and machine readable record.

Requester: A Canadian citizen, a permanent resident, or an individual or corporation present in Canada who requests access to a record under the *Access to Information Act*, or a Canadian citizen, a permanent resident or an individual present in Canada who requests access to, or correction of, personal information about himself or herself under the *Privacy Act*.

Risk: The uncertainty that can create exposure to undesired future events and outcomes. It is the expression of the likelihood and impact of an event with the potential to impede the achievement of an organization's objectives. The classic formula for quantifying risk combines magnitude of damage and probability is as follows: risk = probability × impact.

Severability: Principle under section 25 of the *Access to Information Act* in which the protection of information from disclosure must be limited to the portions of information or material that the head of the government institution is authorized or obligated to refuse to disclose under the *Act*.

Transitory records: Records required only for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory records do not include records required by government institutions or Ministers to control, support, or document the delivery of programs, to carry out operations, to make decisions, or to account for activities of government.

Under the control of: For the purposes of the *Access to Information Act* and the *Privacy Act*, records that are in the physical or legal possession of a government institution are generally considered under its control. This may include copies of records that were shared by original owners or creators of the information outside of the institution. Records under the control of a government institution can be subject to an access to information or personal information request.

However, the notion of control must be given a broad and liberal meaning in order to ensure a meaningful right of access to government information. “Physical” possession of a document is not required for control to be present.

In determining whether a record is under the control of a government institution, some of the factors include whether it is held at headquarters or at a regional, satellite or other office, either within or outside Canada, or at an off-site location such as a private storage facility or a federal records centre, or held elsewhere on behalf of the institution (for example, records maintained by agents, consultants or other contracted service providers); or the institution is authorized to grant or deny access to the record, to govern its use and, subject to the approval of the National Archivist, to dispose of it.

A document held elsewhere could be deemed to be under the control of a government institution if the following two-step test is satisfied:

- Step 1: Whether the content of the record relates to a institutional matter (e.g. an issue or subject directly related to the government institution’s mandate, program or legislative or regulatory requirement); and
- Step 2: If so, whether a senior official of the government institution could reasonably expect to obtain a copy of the record upon request, based on factors such as the substantive content of the record, the circumstances in which it was created, and the legal relationship between the institution and the record holder.

ANNEX B: PROCEDURE TO REPORT A POTENTIAL CONTRAVENTION OF SECTION 67.1 OF THE ACCESS TO INFORMATION ACT

Section 67.1 of the *Access to Information Act* provides that any person, who destroys, alters, falsifies or conceals a record, or directs anyone to do so, with the intent of obstructing the right of access that is provided by the *Act* is guilty of an offence and liable to imprisonment and/or a fine. You should also be aware that any confirmed contravention to this provision will result in disciplinary action, up to and including termination of employment.

The destruction, alteration, falsification, or concealment of records are in contravention of the *Act* and as such considered to be “wrongdoings” under the *Public Servants Disclosure Protection Act* (PSDPA).

Public servants, including the Staff of the NPF and those with delegated authority under the *Access to Information Act*, are expected to immediately disclose such wrongdoings, as the case may be, to a supervisor, the CFMWS NM ATIP, the Internal Disclosure Office (IDO) within the Department of National Defence (DND), or the Public Sector Integrity Commissioner.

For more information about the disclosure process under the PSDPA or the CAF Disclosure Process, please call the DND IDO toll-free line at 1 866 236 4445, or send a confidential email to IDO-BDI@CRS or DSEI@Ottawa-Hull.

Contractors and students also have a responsibility to come forward and should immediately report such wrongdoings by calling the DND IDO at 1 866 236 4445.