

Town of North Rustico
A Bylaw to Regulate Access to Information
Bylaw No. 2020-05

A bylaw to establish and maintain procedures for access to information and protection of personal information in the Town of North Rustico.

This Bylaw is made under the authority of the *Municipal Government Act*, R.S.P.E.I. 1988 Cap. M-12.1.

BE IT ENACTED BY THE COUNCIL OF THE TOWN OF NORTH RUSTICO as follows:

1. Title

- 1.1. This bylaw may be cited and referred to as the “Access to Information and Protection of Personal Information Bylaw.”

2. Definitions

2.1. In this Bylaw:

- (a) “Act” means the Municipal Government Act.
 - (b) “Adjudicator” means the independent, third party, adjudicator appointed by Council under section 19.3.
 - (c) “applicant” means a person applying for access to information under this Bylaw.
 - (d) “Authorized Representative” means:
 - i. If an individual is deceased, the individual’s personal representative;
 - ii. A guardian or trustee who has been appointed for the individual;
 - iii. If the individual is a minor, the individual’s guardian; or
 - iv. Any person who has written authorization from the individual to act on the individual’s behalf;
 - (e) “Chief Administrative Officer” or “CAO” means the administrative head of a municipality as appointed by council under subsection 86(2)(c) of the *Municipal Government Act*.
 - (f) “Complaint” means a Complaint and a request for review made under section 19.1;
 - (g) “Complainant” means the person who makes a complaint and requests a review under section 19.1;
 - (h) “Coordinator” means an Access to Information and Protection of Personal Information Coordinator appointed by Council;
 - (i) “Council” means the Town’s Council;
 - (j) “Councillor” means a member of council other than the mayor.
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- (k) "Fee Schedule" means the Fee Schedule established in this Bylaw and annexed hereto as Schedule "A";
- (l) "FOIPP" means the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I, 1988, Cap. F-15.01, as may be amended from time to time, or any successor act.
- (m) "Law Enforcement" means:
 - i. Policing, including criminal intelligence operations;
 - ii. A police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred; or
 - iii. Proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings, or by another body to which the results of the proceedings are referred;
- (n) " Mayor" means the Town's Mayor.
- (o) "Record" means a Record of information in any form, including electronic form, but does not include a mechanism or system for generating, sending, receiving, storing or otherwise processing information and includes any information that the Town is required to provide access to under the subsection 147(1) of the Act;
- (p) "Requestor" means the person who makes a request to correct Personal Information under section 17.1 or 17.4;
- (q) "Personal Information" means Personal Information as defined in subsection 1(i) of FOIPP, but does not include a person's address;
- (r) "Regulations" means the *Access to Information and Protection of Personal Information Regulations* enacted pursuant to paragraph 261(1)(g);
- (s) "Third Party" means a person, a group of persons, or an organization other than an Applicant of the Town; and
- (t) "Town" means the Town of North Rustico.

3. Application

- 3.1. This Bylaw applies to records that were created or collected on and after the coming into force of this Bylaw.

4. Appointment and Duties of a Coordinator

- 4.1. The Council shall appoint a Coordinator whose duties include, but are not limited to:
 - (a) Accepting and processing applications for access to information;
 - (b) Clarifying and responding to access to information applications, including deciding whether to grant or refuse the application for access to information;

- (c) Providing education and training to Council members and Town employees with respect to this Bylaw and the Act as it applies to access to records and the protection of Personal Information;
- (d) Assisting Town staff in conducting searches in response to access to information applicants;
- (e) Prepare fee estimates in accordance with the Fee Schedule; and
- (f) Providing a written annual report to Council which includes at a minimum;
 - i. The number of applications for access to information;
 - ii. The number of applications where access to information was granted; and the number of applications where access to information was denied.

4.2. Council shall not appoint any of the following persons as Coordinator:

- (a) A member of Council, or
- (b) The chief administrative officer of another municipality.

5. Entitlement to Access

5.1. Subject to sections 8.1 and 8.2, and the provisions of any other enactment that restrict or limit the disclosure of information, and Applicant is entitled to access a record that was created or collected by the Town, including a Record containing Personal Information about the Applicant, in relation to the following matters:

- (a) Assessment information;
- (b) Approved financial plans;
- (c) Approved annual financial statements;
- (d) Auditor reports;
- (e) Minutes of all meetings of the Council and Council committees;
- (f) Bylaws or proposed bylaws which have received first reading;
- (g) Resolutions of the Council and Council committees passed at open meetings of the Council or Council committee together with any relevant information that was taken into consideration in the decision to pass the resolution;
- (h) Permits which have been issued;
- (i) Approvals which have been granted;
- (j) All grants, contributions and donations, with the name of each recipient;
- (k) All contracts, except a contract:
 - i. In respect of which the release of information could jeopardize an individual's safety or security; or
 - ii. The disclosure of which could reasonably be expected to harm significantly the competitive position or interfere significantly with the Town's negotiating position;

- (l) All compensation, expenses and other payments made annually to each Council member pursuant to section 82 of the Act;
- (m) Strategic plans;
- (n) All policies; and
- (o) All documents that have been tabled or adopted at open meetings of the Council or Council committees that:
 - i. Are not included in subsections (a) to (n);
 - ii. Do not fall within the scope of subsection 119(1) of the Act; and
 - iii. Are not subject to solicitor-client privilege.

6. Public Inspection

6.1. The following information shall be made available within three business days upon request:

- (a) Current approved financial plans;
- (b) Current approved annual financial statements;
- (c) Audited financial reports;
- (d) Approved minutes of all Council and Council committee meetings;
- (e) Resolutions contained in the register referred to in clause 93(3)(i) of the Act;
- (f) Current strategic plans;
- (g) All policies;
- (h) Bylaws or proposed bylaws that have received first reading; and
- (i) All compensation, expenses and other payments made annually to each Council member, Council committee member and all members of any boards or other bodies established by Council for the previous year.

6.2. The records set out in section 6.1 will be made available at the Town's municipal office during regular office hours.

7. Access to Information Application

7.1. When an Applicant seeks to obtain a Record:

- (a) That contains Personal Information of another individual or information about a Third Party; or
- (b) That is not listed in section 6.1;

the Applicant shall make an application to the Coordinator.

7.2. An application to the Coordinator shall:

- (a) Be in writing;
- (b) Provide sufficient detail to enable the Coordinator to identify the Record; and

- (c) Specify whether the Applicant is requesting a photocopy of the Record or to examine the Record.

- 7.3. An application made under 7.1 may be made in electronic format where the Coordinator consents to receiving the application by electronic means.
- 7.4. Subsequent communications between an Applicant and the Coordinator may be by electronic means where both the Coordinator and the Applicant consent to communicate by the means.

8. Applications for Personal Information of information of a Third Party

- 8.1. The only Personal Information that the Town may disclose to an applicant in relation to a third party is Personal Information that is authorized to be disclosed under the Act or this Bylaw.
- 8.2. Subject to section 8.3, the Coordinator shall refuse to disclose Personal Information of another individual or information relating to a Third Party, except a person's address, to an Applicant.
- 8.3. Despite section 8.2, the following records may be disclosed to an Applicant notwithstanding that the Record may include Personal Information or information relating to a Third Party:
 - (a) An assessment list, as that term is defined in paragraph 1(1)(c) of the *Real Property Assessment Act Regulations*, P.E.I. Reg. EC490/72, or a portion of that list;
 - (b) With respect to an issued permit:
 - i. The general nature of the permit application;
 - ii. The name of the applicant; and
 - iii. The applicant's address;
 - (c) With respect to a development permit:
 - i. The maps and site plans provided as part of the development application, delineating the location of the proposed development;
 - ii. A summary of the public notification process;
 - iii. A summary of the responses received as a result of the public notification process;
 - iv. Staff reports in relation to the application; and
 - v. The minutes of the Planning Board in relation to the application;
 - (d) With respect to approvals granted by the Town:
 - i. The name of the person to whom approval has been granted; and
 - ii. A general description of the approval;
 - (e) With respect to grants, contributions and donations:
 - i. The name of the recipient;

- ii. The amount of the grant, contribution or donation; and
- iii. The purpose of the grant, contribution or donation;
- (f) With respect to contracts:
 - i. The name of the person to whom the contract has been awarded;
 - ii. The amount of the contract; and
 - iii. A general description of the goods and services to be provided under the contract.

9. Solicitor-Client Privilege

- 9.1. No person has the right to access information that is subject to solicitor-client privilege.
- 9.2. Section 9.1 does not apply if the Chief Administrative Officer, in the performance of that person's duties, has authorized a member of Council or an employee of the Town to access the privileged Record.

10. Procedure following an Application to Obtain a Record

- 10.1. Within 30 days of receiving an application, the Coordinator shall either:
 - (a) If the Coordinator believes that the Record is reasonably accessible to the Town, provide the Applicant with a written fee estimate and, subject to section 11.5, grant the Applicant access to the information;
 - (b) If the Coordinator believes the Record cannot reasonably be accessed within 30 days of the date of the application, provide the Applicant:
 - i. Notice, in writing, of the anticipated delay;
 - ii. With an anticipated date of when the Record will be available; and
 - iii. With a written fee estimate; or
 - (c) Refuse the application and provide the Applicant:
 - i. Written reasons explaining the refusal; and
 - ii. The provision of the Act, Regulations, or this Bylaw upon which the refusal is based.
 - 10.2. When the Coordinator allows the Applicant to inspect the requested Records, that inspection shall take place at the Town's municipal office during regular business hours and shall be made under the supervision of a Town employee.
 - 10.3. A request for a photocopy of a Record may be satisfied by the Coordinator in one of the following ways:
 - (a) By providing the Applicant with a physical photocopy of the Record; or
 - (b) By providing the Applicant with an electronic version of the Record.
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11. Fees

- 11.1. The Coordinator may require an Applicant to pay a fee to the Town for the cost of anticipated services in accordance with the Fee Schedule.
- 11.2. Except for the cost of producing a copy, section 11.1 does not apply to the following requests:
 - (a) A request for the Applicant's own Personal Information; and
 - (b) A request for a Record listed under section 6.1, so long as the request was made within 2 years from the date the Record was first made available for public inspection
- 11.3. An Applicant may, in writing, request that the Coordinator excuse the Applicant from paying all or part of a fee for services under section 11.1.
- 11.4. The Coordinator may excuse an Applicant from paying a fee if, in the opinion of the Coordinator:
 - (a) The Applicant cannot afford to pay the fee for any other reason it is appropriate to excuse the payment; or
 - (b) The Record or document relates to a matter of public interest, including the environment or public health or safety.
- 11.5. The fees referred to in section 11.1 shall not exceed the actual cost of the services rendered.
- 11.6. If the Coordinator determines that a fee is appropriate, the Applicant shall pay the entirety of the fee before the Applicant may access the requested records.

Part II – PROTECTION OF PERSONAL INFORMATION

12. Authority to Collect Personal Information

- 12.1. No Personal information may be collected for the Town unless:
 - (a) The collection of that information is expressly authorized by or under an enactment of Prince Edward Island or Canada or a bylaw of the Town;
 - (b) The information relates directly to and is necessary for an operating program or activity of the Town; or
 - (c) The information is collected for the purposes of Law Enforcement.
 - 12.2. Personal Information shall be collected directly from the individual to whom the information relates unless:
 - (a) The information may be disclosed to the Town under FOIPP;
 - (b) Another method of collection is authorized by that individual or by FOIPP;
 - (c) The information is necessary:
 - i. To determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Town and is collected in the
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course of processing an application made by or on behalf of the individual the information is about; or

- ii. To verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the Town and is collected for that purpose;
 - (d) The information is collected for the purpose of collecting a fine or a debt owed to the Town;
 - (e) The information is collected for the purpose of managing or administrating personnel of the Town;
 - (f) The information concerns an individual who is designated as a person to be contracted in an emergency, or other specified circumstances;
 - (g) The information is collected for the purpose of determining suitability for an honour or award; or
 - (h) The information is collected for the purpose of Law Enforcement.
- 12.3. Where the Town collects Personal Information directly from an individual, the individual shall be informed of:
- (a) The purpose for which the information is collected;
 - (b) The specific legal authority for the collection; and
 - (c) The contact information of an employee of the Town who can answer questions about the collection.
- 12.4. The Chief Administrative Officer shall protect Personal Information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, disposal or destruction.

13. Use of Personal Information

- 13.1. The Town may only use Personal Information:
- (a) For the purpose for which the Personal Information was collected or compiled or for a use consistent with that purpose;
 - (b) If the individual the information is about has identified the information and consented, in writing, to the use; or
 - (c) For a purpose for which that information may be disclosed by the Town under sections 14 and 15.
- 13.2. The Town may use Personal Information only to the extent necessary to enable the Town to carry out its purpose in a reasonable manner.
- 13.3. For the purpose of subsection 13.1 (a), a use of Personal Information is consistent with the purpose for which the Personal Information was collected or compiled if the use:
- (a) Has reasonable and direct connection to that purpose; and
 - (b) Is necessary for performing the statutory duties of, or for operating an authorized program of, the Town that uses the Personal Information.
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14. Disclosure of Personal Information

- 14.1. The Town may disclose Personal Information only:
- (a) For the purpose of complying with the Act or this Bylaw;
 - (b) For the purpose of complying with an enactment of Prince Edward Island or Canada;
 - (c) For the purpose for which the information was collected or compiled or for a use consistent with that purpose;
 - (d) If the individual the information is about has identified the information and consented, in writing, to the disclosure;
 - (e) For determining an individual's suitability or eligibility for a program or benefit, including determining if an individual remains eligible or suitable for a program or benefit that individual is already participating in;
 - (f) If the information is necessary for the delivery of a program or service of the Town;
 - (g) For the purpose of managing or administering personnel of the Town or to a representative of a bargaining agent who has been authorized, in writing, by the employee to whom the information pertains to make an inquiry;
 - (h) To a law enforcement agency in Canada to assist in an investigation:
 - i. Undertaken with a view to a law enforcement proceeding, or
 - ii. From which a law enforcement proceeding is likely to result;
 - (i) When the information is available to the public
 - (j) If the Personal Information is information of a type routinely disclosed in a business or professional context and the disclosure:
 - i. Is limited to an individual's name and business contact information, including business title, address, telephone number, facsimile number and email address; and
 - ii. Does not reveal other Personal Information about the individual or Personal Information about another individual;
 - (k) If the Chief Administrative Officer believes, on reasonable grounds, that the disclosure will avert or minimize an imminent danger to the health or safety of any person; or
 - (l) For a research purpose, including statistical research, if:
 - i. The research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form;
 - ii. The provision of information is not harmful to the individual the information is about and the benefits to be derived from the provision of information are clearly in the public interest;
 - iii. The Chief Administrative Officer has approved conditions relating to the following:
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- A. Security and confidentiality,
 - B. The removal or destruction of individual identifiers at the earliest reasonable time, and
 - C. The prohibition of any subsequent use or disclosure of the information in individually identifiable form without the express authorization of the Council; and
- iv. The person to whom the information is disclosed has signed an agreement to comply with the approved conditions, the Act, this Bylaw and any other bylaws, policies and procedures of the Town relating to the confidentiality of Personal Information.
- 14.2. For the purpose of subsection 14.1(a), a disclosure of Personal Information is consistent with the purpose for which the Personal Information was collected or compiled if the disclosure:
- (a) Has a reasonable and direct connection to that purpose; and
 - (b) Is necessary for performing the statutory duties of, or for operating an authorized program of, the Town that discloses the Personal Information.

15. Disclosure of Personal Information to an Applicant

- 15.1. Notwithstanding section 14.1, the Coordinator may refuse to disclose:
- (a) Information, including Personal Information about the Applicant, if the disclosure could reasonably be expected to:
 - i. Threaten anyone else's safety or mental or physical health; or
 - ii. Interfere with public safety;
 - (b) Personal Information about the Applicant if, in the opinion of a physician, psychologist, psychiatrist or any other appropriate expert depending on the circumstances of the case, the disclosure could reasonably be expected to result in immediate and grave harm to the Applicant's health or safety; and
 - (c) Information in a Record or document that reveals the identity of an individual who has provided information to the Town in confidence about a threat to an individual's safety or mental or physical health.

16. Accuracy of Personal Information

- 16.1. Where an individual's Personal Information will be used by the Town, the Town shall:
- (a) Make every reasonable effort to ensure that the information is accurate and complete; and
 - (b) Retain the Personal Information in accordance with the Town's Records Retention and Disposal Bylaw.

17. Right to Request Correction of Personal Information

- 17.1. An individual who believes there is an error or omission in the individual's Personal Information may request the Coordinator to correct the information.
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- 17.2. A request to correct Personal Information shall be made to the Coordinator in writing and with sufficient detail to allow the Coordinator to identify the Personal Information that is subject to the request.
- 17.3. A request to correct Personal Information may be made by electronic format where the Coordinator consents to receiving the request by electronic means.
- 17.4. The right to request a correction to an individual's Personal Information may be exercised by the individual's Authorized Representative.
- 17.5. Subsequent communications between the individual making a request for correction and the Coordinator may be by electronic means where both the Coordinator and the individual consent to communicate by that means.
- 17.6. Notwithstanding section 17.1, the Coordinator shall not correct or otherwise alter an opinion included in Personal Information, including a professional or expert opinion.

18. Procedure to Correct Personal Information

- 18.1. Unless prohibited by law from doing so, the Coordinator shall follow the procedure established in section 18.2-18.7 when the Coordinator is seized with a request to correct Personal Information.
- 18.2. Where a correction is made in response to a request under section 17.1, the Coordinator shall either make a notation on the Record in question, or attach a notation to the Record in question, that a correction has been requested and made.
- 18.3. Where no correction is made in response to a request under section 17.1, or a correction is prohibited under section 17.6, the Coordinator shall either make a notation on the Record in question or attach a notation to the Record in question that a correction has been requested but not made.
- 18.4. Within 60 days after the request under section 17.1 is received, the Coordinator shall give written notice to the Requestor that:
 - (a) The correction has been made; or
 - (b) No correction has been made.
- 18.5. On correcting Personal Information under this section, the Coordinator shall notify any Third Party to whom that information has been disclosed during the one year before the correction was requested that a correction was requested and the decision that was made in response to that request.
- 18.6. The Coordinator may dispense with notifying a third party under section 18.5 if:
 - (a) In the opinion of the Coordinator, the request to correct the Personal Information and the decision that was made is not material; and
 - (b) The individual who requested that correction is advised and agrees in writing that notification is not necessary.

- (a) Notifies the Complainant and the Town that the Adjudicator is extending the 90 day period; and
 - (b) Provides an anticipated date for the completion of the review.
- 19.13. Upon completing a review, the Adjudicator shall issue a decision, in writing, including reasons for the decision, ordering one or more of the following:
- (a) That the Town not correct the Personal Information of the individual;
 - (b) That the Town correct the Personal Information of the individual;
 - (c) That the Town stop collecting, using or disclosing Personal Information in contravention of the Act or this Bylaw;
 - (d) That the Chief Administrative Officer destroy Personal Information collected in contravention of the Act or this Bylaw;
 - (e) That the Complaint be dismissed.
- 19.14. In addition to the orders set out in section 19.13, the Adjudicator may make any other recommendations that the Adjudicator determines appropriate.
- 19.15. The Adjudicator shall provide a copy of the decision to:
- (a) The Complainant;
 - (b) The Chief Administrative Officer; and
 - (c) Council.

20. Duty the Comply with the Adjudicator's Order

- 20.1. Subject to sections 20.2 and 20.3, the Town shall comply with an order of the Adjudicator not later than 40 days after being given a copy of an order.
- 20.2. The Town shall not take any steps to comply with the decision of the Adjudicator until the end of the period for bringing an application for judicial review of the decision under the *Judicial Review Act*, R.S.P.E.I. Cap. J-3
- 20.3. If an application for judicial review is made before the end of the period referred to in section 20.2, the decision of the Adjudicator is stayed until the application is dealt with by the court.

21. Effective Date

- 21.1. This Access to Information Bylaw, Bylaw# 2020-05, shall be effective on the date of approval and adoption below.

22. Repeal

- 22.1. Any and all access to information and protection of personal information bylaws passed previous to this Bylaw, by a Council of the Town, are hereby repealed.
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First Reading:

This Access to Information Bylaw, Bylaw# 2020-05, was read a first time at the Council meeting held on the 27 day of April 2020.

This Access to Information Bylaw, Bylaw# 2020-05, was approved by a majority of Council members present at the Council meeting held on the 27 day of April 2020.

Second Reading:

This Access to Information Bylaw, Bylaw# 2020-05, was read a second time at the Council meeting held on the 11 day of May 2020

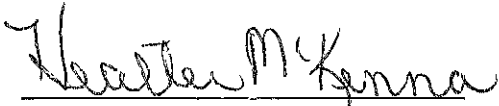
This Access to Information Bylaw, Bylaw# 2020-05, was approved by a majority of Council members present at the Council meeting held on the 11 day of May 2020.

Approval and Adoption by Council:

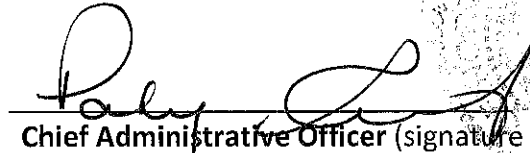
This Access to Information Bylaw, Bylaw# 2020-05, was adopted by a majority of Council members present at the Council meeting held on the 11 day of May 2020.

The Access to Information and Protection of Personal Information Bylaw is declared to be passed on the 11 day of May 2020.

WITNESS the corporate seal of the Town.



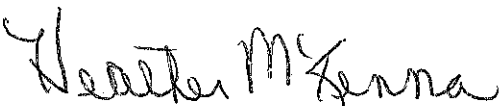
Mayor (signature sealed)



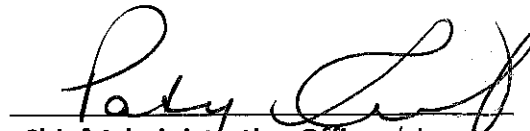
Chief Administrative Officer (signature sealed)

BE IT RESOLVED THAT: Bylaw No. 2020-04, being a bylaw related to the appointment of enforcement officers in the Town, is hereby enacted as a bylaw of the Town and the Mayor and Chief Administrative Officer be and they are hereby authorized to sign the Bylaw and apply to Town's seal thereto.

Dated the 11 day of May 2020.



Mayor (signature sealed)



Chief Administrative Officer (signature sealed)

Schedule A

Fee Schedule

1. Fees

1.1 The Fees established pursuant to section 11 of the bylaw for locating, retrieving, preparing, producing, and supervising the examination of information shall be in accordance with the amounts set out in the table below.

SERVICE	FEE
Photocopying	8 cents per page
Administrative Staff	\$25 per hour
Senior Staff	\$50 per hour
External Legal Counsel	Actual Cost

1.2 Pursuant to section 11,3 of the bylaw, a deposit of 50 percent of the estimated costs shall be paid to the Town before any search for the information requested shall be commenced, and all fees associated with the request for access to information shall be paid before the release of the copies of the records or the documents containing the information.