

TOWN OF STRATFORD

OPEN GOVERNMENT BYLAW

BYLAW NUMBER 44



BE IT ENACTED by the Council of the Town of Stratford as follows:

PART I - INTRODUCTION

1. Title

This bylaw shall be known and cited as the "Open Government Bylaw."

2. Authority

The Municipal Government Act R.S.P.E.I. 1988, Cap. M-12.1 and the Freedom of Information and Protection of Privacy Act R.S.P.E.I. 198, Cap. F-15.01

3. Intent

3.1. The Council of the Town of Stratford has been implementing improvements to its governance process in order to increase accountability, transparency, engagement and sustainability. The Council of the Town of Stratford, in its efforts to become more open and transparent, is adopting an open by default approach which means that there is a presumption that data, information and dialogue is open and access should not be restricted except when it is Personal Information or when the subject is confidential in accordance with Section 119 of the MGA. This Open Government Bylaw seeks to improve:

- (a) the engagement of residents and other stakeholders in the Town decision making process;
- (b) the evidence upon which Town decisions are made;
- (c) the transparency of the Town decision making process;
- (d) the efficient and effective use of town resources;
- (e) the free and open access to Town information and data for public and private use; and
- (f) the protection of Personal Information in the custody of the Town.

3.2. Where there is a conflict between this Bylaw and FOIPP or any regulations made thereunder, FOIPP or the regulation made thereunder shall prevail.

4. Definitions

4.1. In this bylaw:

- (a) “CAO” means the Chief Administrative Officer or person delegated by the CAO to administer this bylaw;
- (b) “Commissioner” has the same meaning as in FOIPP;
- (c) “Confidential Matters” means matters for which Council or a Council Committee may, by resolution, close a meeting in accordance with Section 119 of the *Municipal Government Act*;
- (d) “Council” means the duly elected Council of the Town of Stratford;
- (e) “Council Committee” means a committee or sub-committee established in the *Committee Bylaw*;
- (f) “Data” means facts, figures and statistics objectively measured according to a standard or scale such as frequency or volumes or occurrences;
- (g) “Dataset” is an organized collection of data. The most basic representation of a dataset is data elements presented in tabular form. A dataset may also present information in a variety of non-tabular formats, such as an extensible mark-up language (XML) file, a geospatial data file, or an image file;
- (h) “FOIPP” means the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 198, Cap. F-15.01 and regulations made thereunder;
- (i) “Information” includes photos, emails, PDF files, word processing documents, and webpages;
- (j) “Machine Readable” means being able to allow automated import and processing through computer application in a format that is generally accepted and openly available;
- (k) “Metadata” means information about data that describes or characterizes such data to assist in its retrieval, interpretation, or use;
- (l) “MGA” means the *Municipal Government Act*, R.S.P.E.I. 1988, Cap. M-12.1 and regulations made thereunder;
- (m) “Town” means the Town of Stratford;
- (n) “Open Data” means datasets that have been published in accordance with this Policy;
- (o) “Open Data Catalogue” means a listing of datasets that have been made available as Town Open Data;
- (p) “Personal Information” means Recorded information about an identifiable individual as defined in FOIP;
- (q) “Public Body” has the same meaning as in FOIP;
- (r) “Record” has the same meaning as in FOIPP.

PART II – OPEN GOVERNMENT

5. Council Decision Process

- 5.1. For any issue that requires a decision of Council, the following process shall apply:
- (a) A member of the public, Council or staff may submit a Request for Decision (RFD) on the form provided in “Schedule A”, which is attached to and forms part of this bylaw, and which may be changed by Council by simple resolution.
 - (b) The CAO will review the RFD and respond as follows:
 - i. Where the decision falls within the authority of Council, refer the matter to a Council Committee for recommendation to Council.
 - ii. Where the decision falls within the authority of Town staff, ensure the decision is made and advise the person who submitted the RFD, and other persons or organizations as necessary.
 - iii. Where the decision is outside of the authority of the Town, advise the person who submitted the RFD.
 - (c) For items that, in the opinion of the CAO, are frivolous or vexatious, or have been previously considered, or may not be supported by Council, the RFD will first be forwarded to the Committee of the Whole Council for discussion and Council may direct the CAO to proceed as outlined in this section or to dispose of the RFD and advise the person who submitted it that it will not be considered. Council may delegate such requests to a council committee.
- 5.2. For decisions that are within the authority of the Council, the following actions must first be completed by staff:
- (a) Assemble background information
 - (b) Conduct engagement activities in accordance with *Engagement Strategy*
 - (c) Assess the request in accordance with the *Sustainability Decision Making Framework Policy*
 - (d) Consider the staffing, budget and other relevant implications of the request.
 - (e) Prepare a report outlining the results and information.
- 5.3. Staff will forward the RFD and the report from Sub-Section (2) to the appropriate Council Committee(s).
- 5.4. Committee agenda packages, including RFDs and reports, will be made available on the Town’s website at least three days prior to the Committee meeting.

Open Government Bylaw

- 5.5. A mechanism(s) will be established to enable members of the public to submit comments which add value to the discussion for any agenda item.
- 5.6. The Committee(s) will review the RFD, report and public comments and make a recommendation to Council.
- 5.7. The draft minutes of the Committee Meetings shall be made available on the Town's website at least three days prior to the Council meeting.
- 5.8. A mechanism(s) will be established to enable members of the public to submit comments which add value to the discussion for any agenda item.
- 5.9. Council agenda packages and reports will be made available on the Town's website at least three days prior to the Council meeting.
- 5.10. All Committee and Council Meetings are open to the public except where closed to deal with Confidential Matters.
- 5.11. The draft minutes of the Council Meetings shall be made available on the Town's website no later than three weeks after the Council Meeting.
- 5.12. For items that require an application to be submitted in accordance with a Town bylaw or policy, the application shall serve as the request for decision.
- 5.13. Council may by resolution, for urgent matters, skip any of the steps outlined in this Section.

6. Open Information and Data

- 6.1. The following information will be posted on the Town's website within six months of the effective date of this bylaw:
 - (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 and proposed bylaws which have received first reading;
 - (g) resolutions of the Council and Council Committees, passed at open meetings, together with any relevant information and attachments thereto;
 - (h) permits which have been issued;
 - (i) approvals which have been granted;
 - (j) grants and donations in accordance with the *Grants and Donations Bylaw*;
 - (k) all contracts, except a contract
 - i. in respect of which the release of information could jeopardize an individual's safety or security, or

Open Government Bylaw

- ii. the disclosure of which could reasonably be expected to harm significantly the competitive position or interfere significantly with the negotiating position of a municipality;
- (l) all compensation, expenses and other payments made annually to each council member pursuant to section 82 of the MGA;
- (m) strategic plans;
- (n) all policies;
- (o) all documents that have been tabled or adopted at open meetings of the council or council committees that
 - i. are not included in clauses (a) to (n),
 - ii. do not fall within the scope of subsection 119(1), and
 - iii. are not subject to solicitor–client privilege.
- (p) No Personal Information that is included in any of the types of information listed in clauses (1)(a) to (o) shall be disclosed except in accordance with this bylaw, FOIPP and the MGA and
 - i. to the person whose Personal Information it is;
 - ii. to a person authorized by the person referred to in sub-clause (i);
 - iii. in accordance with Part IV of this bylaw; or
 - iv. in accordance with FOIPP

7. Open Data Application

- 7.1. This bylaw applies to datasets which are owned by the Town or are in the custody of the Town and for which the Town has authorization from the owner of the datasets to release in accordance with this Policy. Notwithstanding the open by default approach, the following data shall not be released:
- (a) Personal Information,
 - (b) data that is subject to a legal or contractual obligation to keep confidential,
 - (c) data that is restricted for public safety reasons.

8. Open Data Directive

- 8.1. In addition to the information in sub-section 6 (1), The CAO shall identify and publish Datasets on the Town’s website, except for datasets that are exempted in Section 7, in machine and human readable formats in accordance with the Open Data Principles. When determining the priority for the publication and datasets, consideration shall be given to available budget resources, requests from members of the public, and opportunities for enhanced engagement, transparency, service delivery or economic development.
- 8.2. The published datasets shall:
- (a) include Metadata to describe the Data;

- (b) be organized within a Data Catalogue to give potential consumers of the Data a ready reference of available Datasets; and
- (c) be subject to the Town of Stratford Open Data Licence, which is attached as Schedule B, and forms part of this bylaw, and which may be changed by Council by simple resolution.

9. Open Data Principles

9.1. The publication of Town Data shall respect the following Open Data principles which are derived from the Government of PEI's and the Government of Canada's Open Data principles:

(a) Completeness

Datasets should be as complete as possible, reflecting the entirety of what is recorded about a particular subject. All raw information from a dataset should be released to the public, excepting Personal Information. Metadata that defines and explains the raw data should be included, along with explanations for how the data was calculated.

(b) Primacy

Datasets should come from a primary source. This includes the original information collected by the Town and available details on how the data was collected. Public dissemination will allow users to verify that information was collected properly and Recorded accurately.

(c) Timeliness

Datasets released by the Town should be made available to the public in a timely fashion. Priority should be given to data whose utility is time sensitive.

(d) Ease of Physical and Electronic Access

Datasets released by the Town should be as accessible as possible, with accessibility defined as the ease with which information can be obtained. Barriers to electronic access include making data accessible only via submitted forms or systems that require browser-oriented technologies (e.g., Flash, Javascript, cookies or Java applets).

(e) Machine Readability

Machines can handle certain kinds of inputs much better than others. Datasets released by the Town should be stored in widely-used file formats that easily lend themselves to machine processing (e.g. CSV, XML). These files should be accompanied by documentation related to the format and how to use it in relation to the data.

(f) Non-Discrimination

Non-discrimination refers to who can access data and how they must do so. Barriers to use of data can include registration or membership requirements. Datasets released by the Town should have as few barriers

to use as possible. Non-discriminatory access to data should enable any person to access the data at any time without having to identify themselves or provide any justification for doing so.

(g) Use of Commonly Owned Standards

Commonly owned standards refer to who owns the format in which data is stored. For example, if only one company manufactures the program that can read a file where data is stored, access to that information is dependent upon use of that company's program. Sometimes that program is unavailable to the public at any cost, or is available, but for a fee. Removing this cost makes the data available to a wider pool of potential users. Datasets released by the Town should be in freely available file formats as often as possible.

(h) Licencing

The Town releases datasets under the Town of Stratford Open Data Licence which is designed to increase openness and minimize restrictions on the use of the data.

(i) Permanence

The capability of finding information over time is referred to as permanence. For best use by the public, information made available online should remain online, with appropriate version-tracking and archiving over time.

(j) Usage Costs

The Town releases the data through the website free of charge.

10. Data Sharing Agreements

The CAO is hereby authorized to enter into data sharing agreements with third party organizations to provide datasets for the Open Data Catalogue at no cost

11. New Software

The specification for the procurement of new software data management platforms, applications and solutions must have features as a core function that allow for the extraction of content into an Open Format. This may be accomplished through application programming interfaces (API) in accordance with common best practices.

PART III – ACCESS TO INFORMATION

Division 1 - Access

12. Access to Information

- 12.1. Where a Record has not been made available on the Town’s website in accordance with Part II, any person may apply for access to a Record in the custody or control of the Town, including Personal Information about the applicant.
- 12.2. The right of access to a Record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a Record, an applicant has a right of access to the remainder of the Record.
- 12.3. The right of access to a Record is subject to the payment of a fee in accordance with the FOIPP regulations.

13. Request for a Record

- 13.1. To obtain access to a Record, a person shall make a request to the Town.
- 13.2. A request shall be in writing and shall provide enough detail to enable the Town to identify the Record.
- 13.3. In a request, the applicant may ask
 - (a) for a copy of the Record; or
 - (b) to examine the Record.
- 13.4. Where the CAO contacts an applicant in writing respecting the applicant’s request including
 - (a) seeking further information from the applicant that is necessary to process the request, or
 - (b) requesting the applicant to pay a fee or to agree to pay a fee,and the applicant fails to respond to the CAO, as requested by the CAO, within 30 days of being contacted, the CAO may, by notice in writing to the applicant, declare the request abandoned.
- 13.5. A notice given by the CAO under subsection (4) shall state that the applicant may ask for a review, under Part VI, of a declaration of abandonment of the applicant’s request.

14. Duty to assist applicants

- 14.1. The CAO shall make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.
- 14.2. The CAO shall create a Record for an applicant if

- (a) the Record can be created from a Record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise; and
- (b) creating the Record would not unreasonably interfere with the operations of the Town.

15. Time limit for responding

15.1. The CAO shall respond to a request without undue delay and in any event shall make every reasonable effort to respond to a request not later than 30 days after receiving it unless

- (a) that time limit is extended under section 18; or
- (b) the request has been transferred under section 19 to another public body.

15.2. The failure of the CAO to respond to a request within the 30 day period or any extended period is to be treated as a decision to refuse access to the Record.

16. Contents of response

16.1. In a response under section 15, the applicant shall be informed

- (a) whether access to the Record or part of it is granted or refused;
- (b) if access to the Record or part of it is granted, where, when and how access will be given; and
- (c) if access to the Record or to part of it is refused,
 - i. the reasons for the refusal and the provision of this Bylaw on which the refusal is based,
 - ii. the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
 - iii. that the applicant may ask for a review of that decision by the Commissioner.

16.2. Despite subclause 16.1(c)(i), the CAO may, in a response, refuse to confirm or deny the existence of

- (a) a Record containing information described in section 22 or 24; or
- (b) a Record containing Personal Information about a third party if disclosing the existence of the information would be an unreasonable invasion of the third party's personal privacy.

17. How access will be given

17.1. If an applicant is told under subsection 16.1 that access will be granted, the CAO shall comply with this section.

17.2. If the applicant has asked for a copy of a Record and the Record can reasonably be reproduced,

- (a) a copy of the Record or part of it shall be provided with the response; or
 - (b) the applicant shall be given reasons for any delay in providing the copy.
- 17.3. If there will be a delay in providing the copy under subsection (2), the applicant shall be informed as to where, when and how the copy will be provided.
- 17.4. If the applicant has asked to examine a Record or for a copy of a Record that cannot reasonably be reproduced, the applicant
- (a) shall be permitted to examine the Record or part of it; or
 - (b) shall be given access in accordance with the regulations of FOIPP.

18. Extending the time limit for responding

- 18.1. The CAO may extend the time for responding to a request for up to 30 days or, with the Commissioner's permission, for a longer period if
- (a) the applicant does not give enough detail to enable the public body to identify a requested Record;
 - (b) a large number of Records is requested or must be searched, and responding within the period set out in section 9 would unreasonably interfere with the operations of the public body;
 - (c) more time is needed to consult with a third party or another public body before deciding whether or not to grant access to a Record; or
 - (d) a third party asks for a review under subsection 56.2.
- 18.2. The CAO may, with the Commissioner's permission, extend the time for responding to a request if multiple concurrent requests have been made by the same applicant or multiple concurrent requests have been made by two or more applicants who work for the same organization or who work in association with each other.
- 18.3. Notwithstanding subsection (1), where the CAO is considering giving access to a Record to which section 34 applies, the head of the public body may extend the time for responding to the request for the period of time necessary to enable the head to comply with the requirements of section 35.
- 18.4. If the time is extended under subsection (1), (2) or (3), the CAO shall inform the applicant
- (a) of the reason for the extension;
 - (b) of when a response can be expected; and
 - (c) of the applicant's entitlement to make a complaint to the Commissioner under subsection 49.2 if the decision was not made by the Commissioner.

19. Transferring a request

- 19.1. Within 15 days after a request for access to a Record is received by the CAO, the CAO may transfer the request and, if necessary, the Record to another Public Body if

- (a) the Record was produced by or for the other public body;
 - (b) the other Public Body was the first to obtain the Record; or
 - (c) the Record is in the custody or under the control of the other Public Body.
- 19.2. If a request is transferred under subsection (1),
- (a) the CAO shall notify the applicant of the transfer as soon as practicable;
 - (b) the head of the Public Body to which the request is transferred shall make every reasonable effort to respond to the request in accordance with FOIPP.

Division 2 —Disclosure Exceptions

20. Disclosure harmful to business interests of a third party

- 20.1. Subject to subsection (2) the CAO shall refuse to disclose to an applicant information
- (a) that would reveal
 - i. trade secrets of a third party, or
 - ii. commercial, financial, labour relations, scientific or technical information of a third party;
 - (b) that is supplied, explicitly or implicitly, in confidence; and
 - (c) the disclosure of which could reasonably be expected to
 - i. harm significantly the competitive position or interfere significantly with the negotiating position of a third party,
 - ii. result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
 - iii. result in undue financial loss or gain to any person or organization, or
 - iv. reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.
- 20.2. The CAO shall refuse to disclose to an applicant information about a third party that was collected on a tax return or collected for the purpose of determining tax liability or collecting a tax.
- 20.3. Subsections (1) and (2) do not apply if
- (a) the third party consents to the disclosure;
 - (b) an enactment of Prince Edward Island or Canada authorizes or requires the information to be disclosed;

- (c) the information relates to a non-arm's length transaction between the Town and another party; or
- (d) the information is in a Record that is in the custody or under the control of the Public Archives and Records Office or the archives of the Town and has been in existence for 50 years or more.

21. Disclosure harmful to personal privacy

- 21.1. The CAO shall refuse to disclose Personal Information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.
- 21.2. A disclosure of Personal Information is not an unreasonable invasion of a third party's personal privacy if
 - (a) the third party has, in writing, consented to or requested the disclosure;
 - (b) there are compelling circumstances affecting anyone's health or safety and written notice of the disclosure is given to the third party;
 - (c) an Act of Prince Edward Island or Canada authorizes or requires the disclosure;
 - (d) the disclosure is for research purposes and is in accordance with sections 44 and 45;
 - (e) the information is about the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of the Town;
 - (f) the disclosure reveals financial and other details of a contract to supply goods or services to the Town;
 - (g) the information is about a license, permit or other similar discretionary benefit relating to
 - i. a commercial or professional activity, that has been granted to the third party by the Town, or
 - ii. real property, including a development permit or building permit, that has been granted to the third party by the Town,and the disclosure is limited to the name of the third party and the nature of the license, permit or other similar discretionary benefit;
 - (h) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by the Town;
 - (i) the Personal Information is about an individual who has been dead for 25 years or more; or
 - (j) subject to subsection (3), the disclosure is not contrary to the public interest and reveals only the following Personal Information about a third party:

- i. admission to a health care facility or institution as a current patient or resident, except where the disclosure would reveal the nature of the third party's treatment,
 - ii. attendance at or participation in a public event or activity related to the Town, including a graduation ceremony, sporting event, cultural program or club, or field trip,
 - iii. receipt of an honour or award granted by or through the Town.
- 21.3. The disclosure of Personal Information under clause (2)(j) is an unreasonable invasion of personal privacy if the third party whom the information is about has requested that the information not be disclosed.
- 21.4. A disclosure of Personal Information is presumed to be an unreasonable invasion of a third party's personal privacy if
 - (a) the Personal Information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
 - (b) the Personal Information was compiled and is identifiable as part of a law enforcement matter, except to the extent that disclosure is necessary to prosecute in respect of , or to continue or conclude, the matter;
 - (c) the Personal Information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels;
 - (d) the Personal Information relates to employment or educational history;
 - (e) the Personal Information was collected on a tax return or gathered for the purpose of collecting a tax;
 - (f) the Personal Information consists of an individual's bank account information or credit card information;
 - (g) the Personal Information consists of personal recommendations or evaluations, character references or personnel evaluations;
 - (h) the Personal Information consists of the third party's name where
 - i. it appears with other Personal Information about the third party, or
 - ii. the disclosure of the name itself would reveal Personal Information about the third party; or
 - (i) the Personal Information indicates the third party's racial or ethnic origin, or religious or political beliefs or associations.
- 21.5. In determining under subsections (1) and (4) whether a disclosure of Personal Information constitutes an unreasonable invasion of a third party's personal privacy, the CAO shall consider all the relevant circumstances, including whether
 - (a) the disclosure is desirable for the purpose of subjecting the activities of the Town to public scrutiny;
 - (b) the disclosure is likely to promote public health and safety or the protection of the environment;

- (c) the Personal Information is relevant to a fair determination of the applicant's rights;
- (d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;
- (e) the third party will be exposed unfairly to financial or other harm;
- (f) the Personal Information has been supplied in confidence;
- (g) the Personal Information is likely to be inaccurate or unreliable;
- (h) the disclosure may unfairly damage the reputation of any person referred to in the Record requested by the applicant; and
- (i) the Personal Information was originally provided by the applicant.

22. Disclosure harmful to individual or public safety

22.1. The CAO may refuse to disclose to an applicant information, including Personal Information about the applicant, if the disclosure could reasonably be expected to

- (a) threaten anyone else's safety or mental or physical health; or
- (b) interfere with public safety.

22.2. The CAO may refuse to disclose to an applicant 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.

22.3. The CAO may refuse to disclose to an applicant information in a Record 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.

23. Confidential evaluations

23.1. The CAO may refuse to disclose to an applicant Personal Information that is evaluative or opinion material compiled solely for the purpose of determining the applicant's suitability, eligibility or qualifications for employment or for the awarding of contracts or other benefits by the Town when the information is provided, explicitly or implicitly, in confidence.

23.2. The CAO may refuse to disclose to an applicant Personal Information that identifies or could reasonably identify a participant in a formal employee evaluation process concerning the applicant when the information is provided, explicitly or implicitly, in confidence.

23.3. For the purposes of subsection (2), "participant" includes a peer, subordinate or client of an applicant, but does not include the applicant's supervisor or superior.

24. Disclosure harmful to law enforcement

- 24.1. (1) The CAO may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
- (a) interfere with or harm a law enforcement matter, including an ongoing or unsolved law enforcement matter;
 - (b) prejudice the defence of Canada or of any foreign state allied to or associated with Canada or harm the detection, prevention or suppression of espionage, sabotage or terrorism;
 - (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement;
 - (d) reveal the identity of a confidential source of law enforcement information;
 - (e) reveal criminal intelligence that has a reasonable connection with the detection, prevention or suppression of organized criminal activities or of serious and repetitive criminal activities;
 - (f) reveal any information relating to or used in the exercise of prosecutorial discretion;
 - (g) deprive a person of the right to a fair trial or impartial adjudication;
 - (h) reveal a Record that has been confiscated from a person by a peace officer in accordance with a law;
 - (i) facilitate the escape from custody of an individual who is being lawfully detained;
 - (j) facilitate the commission of an unlawful act or hamper the control of crime;
 - (k) reveal technical information relating to weapons or potential weapons;
 - (l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system; or
 - (m) reveal information in a correctional Record supplied, explicitly or implicitly, in confidence.
- 24.2. Clause (1)(f) does not apply to information that has been in existence for 10 years or more.
- 24.3. The CAO may refuse to disclose information to an applicant if the information
- (a) is in a law enforcement Record and the disclosure could reasonably be expected to expose to civil liability the author of the Record or an individual who has been quoted or paraphrased in the Record; or
 - (b) is about the history, supervision or release of an individual who is under the control or supervision of a correctional authority and the disclosure could reasonably be expected to harm the proper custody or supervision of that person.

Open Government Bylaw

- 24.4. The CAO shall refuse to disclose information to an applicant if the information is in a law enforcement Record and the disclosure would be an offence under an Act of Canada.
- 24.5. Subsections (1) and (2) do not apply to
- (a) a report prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an Act of Prince Edward Island; or
 - (b) a report, including statistical analysis, on the degree of success achieved in a law enforcement program unless disclosure of the report could reasonably be expected to interfere with or harm any of the matters referred to in subsection (1) or (2).
- 24.6. After a police investigation is completed, the CAO may disclose under this section the reasons for a decision not to prosecute
- (a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim; or
 - (b) to any other member of the public, if the fact of the investigation was made public.

25. Disclosure harmful to intergovernmental relations

- 25.1. The CAO may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
- (a) harm relations between the Town and the Government of Prince Edward Island or its agencies and any of the following or their agencies:
 - i. a municipality,
 - ii. the government of Canada, or a province or territory of Canada,
 - iii. the government of a foreign state, or
 - iv. an international organization of states; or
 - (b) reveal information supplied, explicitly or implicitly, in confidence by a municipality or by a government or an organization listed in clause (a) or its agencies.
- 25.2. The CAO may disclose information referred to in clause (1)(a) only with the consent of the Council.
- 25.3. The CAO may disclose information referred to in clause (1)(b) only with the consent of the municipality, government or organization that supplies the information, or its agency.
- 25.4. This section does not apply to information that has been in existence in a Record for 15 years or more.

26. Town confidences

- 26.1. The CAO may refuse to disclose information to an applicant

- (a) if the disclosure could reasonably be expected to reveal a draft of a resolution, bylaw or other legal instrument by which the Town acts; or
- (b) where the MGA authorizes a meeting of Council or a Council committee to be held in the absence of the public, if the disclosure could reasonably be expected to reveal the substance of deliberations of the meeting.

26.2. Subsection (1) does not apply if

- (a) the draft of the resolution, bylaw or other legal instrument or the subject-matter of the deliberation has been considered in a meeting open to the public; or
- (b) the information referred to in that subsection is in a Record that has been in existence for 15 years or more.

27. Advice from officials

27.1. The CAO may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal

- (a) consultations or deliberations involving
 - i. officers or employees of the Town, or
 - ii. a member of the Council, or
- (b) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Town, or considerations that relate to those negotiations;
- (c) plans relating to the management of personnel or the administration of the Town that have not yet been implemented;
- (d) the contents of draft bylaws;
- (e) the contents of agendas or minutes of meetings of Council or Council committees where the MGA authorizes a meeting of Council or a Council committee to be held in the absence of the public
- (f) information, including the proposed plans, policies or projects of the Town, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision;
- (g) advice, proposals, recommendations, analyses or policy options developed by or for Council; or
- (h) the contents of a formal research or audit report that, in the opinion of the CAO, is incomplete, unless no progress has been made on the report for at least three years.

27.2. Subsection (1) does not apply to information that

- (a) has been in existence for 15 years or more;
- (b) is a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function;

- (c) is the result of a product or environmental testing carried out by or for the Town, which is complete, or on which no progress has been made for at least three years, unless the testing was done
 - i. for a fee as a service to a person other than the Town, or
 - ii. for the purpose of developing methods of testing or testing products for possible purchase;
- (d) is a statistical survey;
- (e) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal, which is complete, or on which no progress has been made for at least three years;
- (f) is an instruction or guideline issued to the officers or employees of the Town; or
- (g) is a substantive rule or statement of policy that has been adopted by the Town for the purpose of interpreting an Act, Bylaw or regulation or administering a program or activity of the public body.

27.3. In this section, “audit” means a financial or other formal and systematic examination or review of a program or activity, or a portion of a program or activity.

28. Disclosure harmful to economic and other interests of the Town

28.1. The CAO may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the economic interest of the Town or the ability of the Town to manage the local economy, including the following information:

- (a) trade secrets of the Town;
- (b) financial, commercial, scientific, technical or other information in which the Town has a proprietary interest or a right of use and that has, or is reasonably likely to have, monetary value;
- (c) information the disclosure of which could reasonably be expected to
 - i. result in financial loss to,
 - ii. prejudice the competitive position of, or
 - iii. interfere with contractual or other negotiations of,the Town;
- (d) scientific or technical information obtained through research by an employee of the Town, the disclosure of which could reasonably be expected to deprive the employee or public body of priority of publication.

28.2. The CAO shall not refuse to disclose under subsection (1) the results of product or environmental testing carried out by or for the Town, unless the testing was done

- (a) for a fee as a service to a person other than the Town; or
- (b) for the purpose of developing methods of testing or testing products for possible purchase..

29. Testing procedures, tests and audits

29.1. The CAO may refuse to disclose to an applicant information relating to

- (a) testing or auditing procedures or techniques;
- (b) details of specific tests to be given or audits to be conducted; or
- (c) standardized tests used by the Town, including intelligence tests, if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits.

30. Privileged information

30.1. The CAO may refuse to disclose to an applicant

- (a) information that is subject to any type of legal privilege, including solicitor-client privilege;
- (b) information prepared by or for
 - i. the Minister of Justice and Public Safety and Attorney General,
 - ii. an agent or lawyer of the Department of Justice and Public Safety, or
 - iii. an agent or lawyer of the Town,

in relation to a matter involving the provision of legal services; or

- (c) information in correspondence between
 - i. the Minister of Justice and Public Safety and Attorney General,
 - ii. an agent or lawyer of the Department of Justice and Public Safety, or
 - iii. an agent or lawyer of the Town,

and any other person in relation to a matter involving the provision of advice or other services by the Minister of Justice and Public Safety and Attorney General, the agent or lawyer.

30.2. The CAO shall refuse to disclose information described in clause (1)(a) that relates to a person other than the Town.

31. Disclosure harmful to the conservation of heritage sites, etc.

- 31.1. The CAO may refuse to disclose information to an applicant if the disclosure could reasonably be expected to result in damage to or interfere with the conservation of
- (a) any archaeological site as defined in the *Archaeological Sites Protection Act* R.S.P.E.I. 1988, Cap. A-17;
 - (b) any heritage place as defined in the *Heritage Places Protection Act* R.S.P.E.I. 1988, Cap. H-3.1; or
 - (c) any rare, endangered, threatened or vulnerable form of life.

32. Information that is or will be available to the public

- 32.1. The CAO may refuse to disclose to an applicant information
- (a) that is available for purchase by the public;
 - (b) that is to be published or released to the public within 60 days after the applicant's request is received; or
 - (c) that is otherwise readily available to the public.
- 32.2. The CAO shall notify an applicant of the publication or release of information that the head has refused to disclose under clause (1)(b).
- 32.3. If the information is not published or released within 60 days after the applicant's request is received, the head of the public body shall reconsider the request as if it were a new request received on the last day of that period, and access to the information requested shall not be refused under clause (1)(b).

33. Public Health and Safety

- 33.1. Whether or not a request for access is made, the CAO shall without delay, disclose to the public, to an affected group of people, to any person or to an applicant
- (a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant; or
 - (b) information the disclosure of which is, for any other reason, clearly in the public interest.
- 33.2. Subsection (1) applies despite any other provision of this Bylaw.
- 33.3. Before disclosing information under subsection (1), the CAO shall where practicable
- (a) notify any third party to whom the information relates;
 - (b) give the third party an opportunity to make representations relating to the disclosure; and
 - (c) notify the Commissioner.

- 33.4. If it is not practicable to comply with subsection (3), the CAO shall give written notice of the disclosure
- (a) to the third party; and
 - (b) to the Commissioner.

Division 3 - Third Party Intervention

34. Notifying the third party

- 34.1. When the CAO is considering giving access to a Record that may contain information
- (a) (a) that affects the interests of a third party under section 20; or
 - (b) (b) the disclosure of which would be an unreasonable invasion of a third party's personal privacy under section 21,
- the CAO shall, subject to section 35, where practicable and as soon as practicable, give written notice to the third party in accordance with subsection (5).
- 34.2. Subsection (1) does not apply to a Record containing information described in clause 21.2(j).
- 34.3. Subsection (1) does not apply to information that the head of the public body may refuse to disclose in accordance with section 36.
- 34.4. If the CAO does not intend to give access to a Record that contains information excepted from disclosure under section 20 or 21, the head may give written notice to the third party in accordance with subsection (3).
- 34.5. A notice under this section shall
- (a) state that a request has been made for access to a Record that may contain information the disclosure of which would affect the interests or invade the personal privacy of the third party;
 - (b) include a copy of the Record or part of it containing the information in question or describe the contents of the Record; and
 - (c) state that, within 20 days after the notice is given, the third party may, in writing, consent to the disclosure or make representations to the public body explaining why the information should not be disclosed.
- 34.6. When notice is given under subsection (1), the CAO shall also give the applicant a notice stating that
- (a) the Record requested by the applicant may contain information the disclosure of which would affect the interests or invade the personal privacy of a third party;

- (b) the third party is being given an opportunity to make representations concerning disclosure; and
- (c) a decision will be made within 30 days after the day notice is given under subsection (1).

35. Time limit and notice of decision

- 35.1. Within 30 days after notice is given pursuant to subsection 34.1 or 34.4, the CAO shall decide whether or not to give access to the Record or to part of the Record, but no decision may be made before the earlier of
- (a) 21 days after the day notice is given; and
 - (b) the day a response is received from the third party.
- 35.2. On reaching a decision under subsection (1), the CAO shall give written notice of the decision, including reasons for the decision, to the applicant and the third party.
- 35.3. If the CAO decides to give access to the Record or part of the Record, the notice under subsection (2) shall state that the applicant will be given access unless the third party asks for a review under Part VI within 20 days after that notice is given.
- 35.4. If the CAO decides not to give access to the Record or part of the Record, the notice under subsection (2) shall state that the applicant may ask for a review under Part VI.

PART IV - PROTECTION OF PRIVACY

Division 1 — Collection of Personal Information

This Part applies to personal information in a Record, in the custody or under the control of the Town, regardless of whether it comes into existence before or after the effective date of this bylaw.

36. Purpose of collection of information

- 36.1. No Personal Information may be collected by or for the Town unless
- (a) the collection of that information is expressly authorized by or under an enactment of the Town, Prince Edward Island or Canada;
 - (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 the Town.

37. Manner of collection of information

- 37.1. The Town shall collect Personal Information directly from the individual the information is about unless
- (a) another method of collection is authorized by
 - i. that individual,
 - ii. a Provincial or federal enactment
 - iii. a Town bylaw
 - iv. the Commissioner under clause 49.1(f);
 - (b) the information may be disclosed to the Town under Division 2 of this Part;
 - (c) the information is collected for the purpose of law enforcement;
 - (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 use in the provision of legal services to the Town;
 - (f) 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 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;
 - (g) the information is collected for the purpose of informing the Public Trustee or a person exercising public guardianship functions about clients or potential clients;
 - (h) the information is collected for the purpose of enforcing a maintenance order under the *Maintenance Enforcement Act* R.S.P.E.I. 1988, Cap. M-1;
 - (i) the information is collected for the purpose of managing or administering personnel of the Town;
 - (j) the information is collected for the purpose of assisting in researching or validating the claims, disputes or grievances of aboriginal people;
 - (k) the information is collected in a health or safety emergency where
 - i. the individual is not able to provide the information directly, or
 - ii. direct collection could reasonably be expected to endanger the mental or physical health or safety of the individual or another person;
 - (l) the information concerns an individual who is designated as a person to be contacted in an emergency, or other specified circumstances;

- (m) the information is collected for the purpose of determining suitability for an honour or award, including an honorary degree, scholarship, prize or bursary; or
 - (n) the information is collected from published or other public sources for the purpose of fundraising.
- 37.2. When the Town collects Personal Information that is required by subsection (1) to be collected directly from the individual the information is about, the Town shall inform the individual of
- (a) the purpose for which the information is collected;
 - (b) the specific legal authority for the collection; and
 - (c) the title, business address and business telephone number of an officer or employee of the public body who can answer the individual's questions about the collection.
- 37.3. Subsections (1) and (2) do not apply if, in the opinion of the CAO, compliance with them could reasonably be expected to result in the collection of inaccurate information.

38. Accuracy of Personal Information

- 38.1. If an individual's Personal Information will be used by the Town to make a decision that directly affects the individual, the Town shall
- (a) make every reasonable effort to ensure that the information is accurate and complete; and
 - (b) retain the Personal Information for
 - i. the period required by the Records retention and disposition schedule for the Town.
 - ii. if subclause (i) does not apply, at least one year after using it

39. Right to request correction of Personal Information

- 39.1. An individual who believes there is an error or omission in the individual's Personal Information may request the CAO to correct the information.
- 39.2. The CAO shall not, under this section, correct or otherwise alter an opinion included in Personal Information, including a professional or expert opinion.
- 39.3. If no correction is made in response to a request under subsection (1), or if no correction is permitted under subsection (2), the CAO shall annotate or link the Personal Information with that part of the requested correction that is relevant and material to the Record in question.
- 39.4. On correcting, annotating or linking Personal Information under this section, the CAO shall notify any third party to whom that information has been disclosed during the one year before the correction was requested that a correction, annotation or linkage has been made.

- 39.5. Notwithstanding subsection (4), the CAO may dispense with notifying any third party that a correction, annotation or linkage has been made if
- (a) in the opinion of the CAO, the correction, annotation or linkage is not material; and
 - (b) the individual who requested the correction is advised and agrees in writing that notification is not necessary.
- 39.6. On being notified under subsection (4) of a correction, annotation or linkage of Personal Information, the Town shall make the correction, annotation or linkage on any Record of that information in its custody or under its control.
- 39.7. Within 30 days after the request under subsection (1) is received, the CAO shall give written notice to the individual that
- (a) the correction has been made; or
 - (b) an annotation or linkage has been made pursuant to subsection (3).
- 39.8. Section 18 applies to the period set out in subsection (7).
- 39.9. Within 15 days after a request to correct Personal Information under subsection (1) is received by the CAO, the CAO may transfer the request to another public body if
- (a) the Personal Information was collected by the other public body; or
 - (b) the other public body created the Record containing the Personal Information.
- 39.10. If a request is transferred under subsection (9),
- (a) the CAO shall notify the individual of the transfer as soon as possible, and
 - (b) the head of the public body to which the request is transferred shall make every reasonable effort to respond to the request not later than 30 days after receiving the request unless the time limit is extended pursuant to subsection (8).

40. Protection of Personal Information

- 40.1. The CAO shall protect Personal Information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, disposal or destruction.

Division 2 — Use and Disclosure of Personal Information by Public Bodies

41. Use of Personal Information

- 41.1. The Town may use Personal Information only
- (a) for the purpose for which the 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 the prescribed manner, to the use; or
- (c) for a purpose for which that information may be disclosed to that public body under section 42, 43 or 44.

41.2. The Town may use Personal Information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.

42. Disclosure of Personal Information

42.1. The Town may disclose Personal Information only

- (a) in accordance with Part III;
- (b) if the disclosure would not be an unreasonable invasion of a third party's personal privacy under section 21;
- (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 the prescribed manner, to the disclosure;
- (e) for the purpose of complying with an enactment of Prince Edward Island or Canada or with a treaty, arrangement or agreement made under an enactment of Prince Edward Island or Canada;
- (f) for any purpose in accordance with an enactment of the Town, Prince Edward Island or Canada that authorizes or requires the disclosure;
- (g) for the purpose of complying with a subpoena, warrant or order, issued or made by a court, person or body having jurisdiction in Prince Edward Island to compel the production of information, or with a rule of court binding in Prince Edward Island that relates to the production of information;
- (h) to an officer or employee of the Town, if the information is necessary for the performance of the duties of the officer or employee;
- (i) to an officer or employee of a public body, if the disclosure is necessary for the delivery of a common or integrated program or service and for the performance of the duties of the officer or employee to whom the information is disclosed;
- (j) for the purpose of enforcing a legal right that the Town has against any person;
- (k) for the purpose of
 - i. collecting a fine or debt owing by an individual to the Town or to an assignee of the Town, or
 - ii. making a payment owing by the Town to an individual;
- (l) for the purpose of 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;
- (m) to the Auditor or any other prescribed person or body for audit purposes;
- (n) to a representative of a bargaining agent who has been authorized in writing by the employee the information is about to make an inquiry;
- (o) to the Records office or to the archives of the Town for permanent preservation;
- (p) to a public body or 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;
- (q) from the Town's law enforcement agency if the information is disclosed
 - i. to another law enforcement agency in Canada, or
 - ii. to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority;
- (r) so that a spouse, relative or a friend of an injured, ill or deceased individual may be contacted;
- (s) in accordance with section 44 or 45;
- (t) to an expert for the purposes of section 22.2;
- (u) for use in a proceeding before a court or quasi-judicial body to which the Town is a party;
- (v) when disclosure is by an agent or lawyer of the Town and to a place of lawful detention;
- (w) for the purpose of managing or administering personnel of the Town;
- (x) to the Director of Maintenance Enforcement for the purpose of enforcing a maintenance order under the *Maintenance Enforcement Act* R.S.P.E.I. 1988, Cap. M-1;
- (y) to the Public Trustee appointed under the *Public Trustee Act* R.S.P.E.I. 1988, Cap. P-32.2, for the purpose of managing the estate of a person under the *Public Trustee Act*;
- (z) when the information is available to the public;
- (aa) 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;

- (bb) to a relative of a deceased individual if, in the opinion of the CAO, the disclosure is not an unreasonable invasion of the deceased's personal privacy;
- (cc) if the CAO believes, on reasonable grounds, that the disclosure will avert or minimize an imminent danger to the health or safety of any person.

42.2. Only information that is reasonably required may be disclosed under subsection (1).

43. Consistent purposes

43.1. For the purposes of clauses 41.1(a) and 42.1(b), a use or disclosure of Personal Information is consistent with the purpose for which the information was collected or compiled if the use or disclosure

- (a) has a reasonable and direct connection to that purpose; and
- (b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.

44. Disclosure for research or statistical purposes

44.1. The Town may disclose Personal Information for a research purpose, including statistical research, only if

- (a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form or the research purpose has been approved by the Commissioner;
- (b) any Record linkage is not harmful to the individuals the information is about and the benefits to be derived from the Record linkage are clearly in the public interest;
- (c) the CAO has approved conditions relating to the following:
 - i. security and confidentiality,
 - ii. the removal or destruction of individual identifiers at the earliest reasonable time, and
 - iii. the prohibition of any subsequent use or disclosure of the information in individually identifiable form without the express authorization of that public body; and
- (d) the person to whom the information is disclosed has signed an agreement to comply with the approved conditions, this Bylaw and any of the Town's policies and procedures relating to the confidentiality of Personal Information.

45. Disclosure for research purposes

45.1. The Public Archives and Records Office and the archives of the Town may disclose

- (a) Personal Information that is

- i. in a Record that has been in existence for 25 years or more if
 - (A) the disclosure would not be an unreasonable invasion of personal privacy under section 15,
 - (B) the disclosure is made in accordance with section 39, or
 - (C) the information is about an individual who has been dead for 25 years or more, or
 - ii. in a Record that has been in existence for 75 years or more; and
- (b) information, other than Personal Information, that is in a Record that has been in existence for 25 years or more if
- i. the disclosure would not be harmful to the business interests of a third party within the meaning of section 20,
 - ii. the disclosure would not be harmful to a law enforcement matter within the meaning of section 24,
 - iii. the information is not subject to any type of legal privilege under section 30, and
 - iv. access to the information is not restricted or prohibited by another Act of Prince Edward Island or Canada.

PART V – INFORMATION AND PRIVACY COMMISSIONER

46. Review

- 46.1. The Commissioner has the power to review monitor the enforcement of Parts III and IV of this bylaw in accordance with this bylaw and FOIPP, and may
- (a) conduct investigations to ensure compliance with Parts III and IV of this bylaw or compliance with rules relating to the destruction of Records set out in any other bylaw;
 - (b) make an order described in subsection 63.3 whether or not a review is requested;
 - (c) inform the public about FOIPP;
 - (d) comment on the implications for freedom of information or for protection of personal privacy of proposed bylaws or programs of the Town;
 - (e) comment on the implications for protection of personal privacy of using or disclosing Personal Information for Record linkage;
 - (f) authorize the collection of Personal Information from sources other than the individual the information is about;
 - (g) bring to the attention of CAO any failure by the public body to assist applicants under section 14; and
 - (h) give advice and recommendations of general application to the CAO on matters respecting the rights or obligations of the CAO under this Bylaw.

- 46.2. Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that
- (a) a duty imposed by section 14 has not been performed;
 - (b) an extension of time for responding to a request is not in accordance with section 18;
 - (c) a fee required under this Bylaw is inappropriate;
 - (d) a correction of Personal Information requested under subsection 39.1 has been refused without justification; and
 - (e) Personal Information has been collected, used or disclosed by the Town in violation of Part IV.

47. Advice and recommendations

- 47.1. The CAO may ask the Commissioner to give advice and recommendations on any matter respecting any rights or duties under this Bylaw.
- 47.2. The Commissioner may in writing provide the CAO with advice and recommendations that
- (a) state the material facts either expressly or by incorporating facts stated by the CAO;
 - (b) are based on the facts referred to in clause (a); and
 - (c) may be based on any other considerations the Commissioner considers appropriate.

48. Power to authorize the Town to disregard questions

- 48.1. If the CAO asks, the Commissioner may authorize the Town to disregard any request made under subsection 13.1, if the request
- (a) would unreasonably interfere with the operations of the Town or amount to an abuse of the right to access, because of the repetitious or systematic nature of the request; or
 - (b) is frivolous or vexatious.
- 48.2. The processing of a request under subsection 13.1 ceases when the CAO has made a request under subsection (1) and
- (a) if the Commissioner authorizes the CAO to disregard the request, does not resume; or
 - (b) if the Commissioner does not authorize the CAO to disregard the request, does not resume until the Commissioner advises the head of the public body of the Commissioner's decision.

49. Powers of Commissioner in conducting inquiries

- 49.1. In conducting an investigation under clause 49.1(a) or an inquiry under section 63 or in giving advice and recommendations under section 50, the Commissioner

has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act* R.S.P.E.I. 1988, Cap. P-31 and the powers given by subsection (2).

- 49.2. The Commissioner may require any Record to be produced to the Commissioner and may examine any information in a Record, including Personal Information whether or not the Record is subject to the provisions of this Bylaw.
- 49.3. Despite any other enactment or any privilege of the law of evidence, the Town shall produce to the Commissioner within 10 days any Record or a copy of any Record required under subsection (1) or (2).
- 49.4. If the Town is required to produce a Record under subsection (1) or (2) and it is not practicable to make a copy of the Record, the CAO may require the Commissioner to examine the original at its site.
- 49.5. After completing a review or investigating a complaint, the Commissioner shall return any Record or any copy of any Record produced.

50. Statements made to the Commissioner not admissible in evidence

- 50.1. A statement made or an answer given by a person during an investigation or inquiry by the Commissioner is inadmissible in evidence in court or in any other proceeding, except
 - (a) in a prosecution for perjury in respect of sworn testimony;
 - (b) in a prosecution for an offence under this Bylaw; or
 - (c) in an application for judicial review or an appeal from a decision with respect to that application.
- 50.2. Subsection (1) applies also in respect of evidence of the existence of proceedings conducted before the Commissioner.

51. Privileged information

- 51.1. Anything said, any information supplied or any Record produced by a person during an investigation or inquiry by the Commissioner is privileged in the same manner as if the investigation or inquiry were a proceeding in a court.

52. Competence and compellability

- 52.1. The Commissioner and anyone acting for or under the direction of the Commissioner is neither competent nor compellable to
 - (a) give evidence in a civil proceeding concerning any information that comes to his or her knowledge in the exercise of a power or the performance of a duty under this Bylaw; or
 - (b) produce in a civil proceeding any Records created or received in the course of activities under this Bylaw.

53. Restrictions on disclosure of information by the Commissioner and staff

- 53.1. The Commissioner and anyone acting for or under the direction of the Commissioner shall not disclose any information obtained in performing their functions under this Bylaw, except as provided in subsections (2) to (5).
- 53.2. The Commissioner may disclose or may authorize anyone acting for or under the direction of the Commissioner to disclose, information that is necessary to
 - (a) conduct an investigation or inquiry under this Bylaw; or
 - (b) establish the grounds for findings and recommendations contained in a report under this Bylaw.
- 53.3. In conducting an investigation or inquiry under this Bylaw and in a report under this Bylaw, the Commissioner and anyone acting for or under the direction of the Commissioner shall take every reasonable precaution to avoid disclosing and shall not disclose
 - (a) any information the CAO would be required or authorized to refuse to disclose if it were contained in a Record requested under subsection 13.1; or
 - (b) whether information exists, if the CAO in refusing to provide access does not indicate whether the information exists.
- 53.4. The Commissioner may disclose to the Minister of Justice and Public Safety and Attorney General information relating to the commission of an offence against an enactment of Prince Edward Island or Canada if the Commissioner considers there is evidence of an offence.

The Commissioner may disclose, or may authorize anyone acting for or under the direction of the Commissioner to disclose, information in the course of a prosecution, application or appeal referred to in section 53.

54. Delegation

- 54.1. The Commissioner may delegate to any person any function of the Commissioner under this Bylaw, except the power to delegate under this section.
- 54.2. A delegation under subsection (1) shall be in writing and may contain any conditions or restrictions the Commissioner considers appropriate.

PART VI — REVIEWS AND COMPLAINTS

Division 1 — Reviews by the Commissioner

55. Right to ask for a review

- 55.1. A person who makes a request to the CAO for access to a Record or for correction of Personal Information may ask the Commissioner to review any decision, act or failure to act of the head that relates to the request.
- 55.2. A third party notified under section 38 of a decision by the CAO to give access may ask the Commissioner to review that decision.
- 55.3. A person who believes that the person's own Personal Information has been collected, used or disclosed in violation of Part V may ask the Commissioner to review that matter.
- 55.4. A relative of a deceased individual may ask the Commissioner to review a decision of a CAO under clause 45.1(cc) not to disclose Personal Information.

56. How to ask for a review

- 56.1. To ask for a review under this Division, a written request shall be delivered to the Commissioner.
- 56.2. A request for a review of a decision of the CAO must be delivered to the Commissioner
 - (a) if the request is pursuant to subsection 59.1, 59.3 or 59.4, within
 - i. 60 days after the person asking for the review is notified of the decision, or
 - ii. any longer period allowed by the Commissioner; or
 - (b) if the request is pursuant to subsection 59.2, within 20 days after the person asking for the review is notified of the decision.
- 56.3. The failure of the CAO to respond in time to a request for access to a Record is to be treated as a decision to refuse access, but the time limit in clause (2)(a) for delivering a request for review does not apply.

57. Notifying others of review

- 57.1. On receiving a request for a review, the Commissioner shall as soon as practicable
 - (a) give a copy of the request
 - i. to the CAO, and
 - ii. to any other person who in the opinion of the Commissioner is affected by the request; and

- (b) provide a summary of the review procedures and an anticipated date for a decision on the review
 - i. to the person who asked for the review,
 - ii. to the CAO, and
 - iii. to any other person who in the opinion of the Commissioner is affected by the request.

57.2. Notwithstanding clause (1)(a), the Commissioner may sever any information in the request for a review that the Commissioner considers appropriate before giving a copy of the request to the CAO or to any other person affected by the request.

58. Use of mediation

58.1. The Commissioner may authorize a mediator to investigate and try to settle any matter that is the subject of a request for a review.

59. Inquiry by Commissioner

59.1. Unless a matter is settled under section 62, the Commissioner shall, subject to section 64, conduct an inquiry and may decide all questions of fact and law arising in the course of the inquiry.

59.2. An inquiry under subsection (1) may be conducted in private.

59.3. The person who asked for the review, the CAO and any other person given a copy of the request for the review shall be given an opportunity to make representations to the Commissioner during the inquiry, but no one is entitled to be present during, to have access to or to comment on representations made to the Commissioner by another person.

59.4. The Commissioner may decide whether the representations are to be made orally or in writing.

59.5. The person who asked for the review, the CAO and any other person given a copy of the request for the review may be represented at the inquiry by counsel or an agent.

59.6. An inquiry under this section shall be completed within 90 days after receiving the request for the review unless the Commissioner

- (a) notifies the person who asked for the review, the CAO and any other person given a copy of the request for the review that the Commissioner is extending that period; and
- (b) provides an anticipated date for the completion of the review.

60. Refusal to conduct an inquiry

60.1. The Commissioner may refuse to conduct an inquiry pursuant to section 63 if, in the opinion of the Commissioner,

- (a) the subject matter of a request for a review under section 59 has been dealt with in an order or investigation report of the Commissioner; or
- (b) the circumstances warrant refusing to conduct an inquiry.

61. Burden of proof

- 61.1. If the inquiry relates to a decision to refuse an applicant access to all or part of a Record, it is up to the CAO to prove that the applicant has no right of access to the Record or part of the Record.
- 61.2. Notwithstanding subsection (1), if the Record or part of the Record that the applicant is refused access to contains Personal Information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.
- 61.3. If the inquiry relates to a decision to give an applicant access to all or part of a Record containing information about a third party,
 - (a) in the case of Personal Information, it is up to the applicant to prove the disclosure of the information would not be an unreasonable invasion of the third party's personal privacy; and
 - (b) in any other case, it is up to the third party to prove that the applicant has no right of access to the Record or part of the Record.

62. Commissioner's orders

- 62.1. On completing an inquiry under section 63, the Commissioner shall dispose of the issues by making an order under this section.
- 62.2. If the inquiry relates to a decision to give or to refuse to give access to all or part of a Record, the Commissioner may, by order, do the following:
 - (a) require the CAO to give the applicant access to all or part of the Record, if the Commissioner determines that the head is not authorized or required to refuse access;
 - (b) either confirm the decision of the CAO or require the CAO to reconsider it, if the Commissioner determines that the CAO is authorized to refuse access;
 - (c) require the CAO to refuse access to all or part of the Record, if the Commissioner determines that the CAO is required to refuse access.
- 62.3. If the inquiry relates to any other matter, the Commissioner may, by order, do one or more of the following:
 - (a) require that a duty imposed by the *Freedom of Information and Privacy Protection Act*, the regulations thereto or this bylaw be performed;
 - (b) confirm or reduce the extension of a time limit under section 18;
 - (c) confirm or reduce a fee or order a refund, in the appropriate circumstances, including if a time limit is not met;

Open Government Bylaw

- (d) confirm a decision not to correct Personal Information or specify how Personal Information is to be corrected;
 - (e) require the Town to stop collecting, using or disclosing Personal Information in violation of Part II;
 - (f) require the CAO to destroy Personal Information collected in violation of this Bylaw
- 62.4. The Commissioner may specify any terms or conditions in an order made under this section.
- 62.5. The Commissioner shall give a copy of an order made under this section
- (a) to the person who asked for the review;
 - (b) to the CAO;
 - (c) to any other person given a copy of the request for the review; and
 - (d) to the Minister.
- 62.6. A copy of an order made by the Commissioner under this section may be filed with the registrar of the General Division of the Supreme Court and, after filing, the order is enforceable as a judgment or order of that court.

63. No appeal

- 63.1. An order made by the Commissioner under this Bylaw is final.

64. Duty to comply with order

- 64.1. Subject to subsection (2), not later than 40 days after being given a copy of an order of the Commissioner, the CAO shall comply with the order.
- 64.2. The CAO shall not take any steps to comply with an order of the Commissioner until the end of the period for bringing an application for judicial review of the order under the *Judicial Review Act* R.S.P.E.I. Cap. J-3.
- 64.3. If an application for judicial review is made before the end of the period referred to in subsection (2), the order of the Commissioner is stayed until the application is dealt with by the court.

DIVISION 2 — DISCLOSURE TO COMMISSIONER

65. Disclosure to Commissioner

- 65.1. An employee of the Town may disclose to the Commissioner any information that the employee is required to keep confidential and that the employee, acting in good faith, believes
- (a) ought to be disclosed by a head under section 36; or
 - (b) is being collected, used or disclosed in violation of Part V.

- 65.2. The Commissioner shall investigate and review any disclosure made under subsection (1).
- 65.3. If an employee makes a disclosure under subsection (1), the Commissioner shall not disclose the identity of the employee to any person without the employee's consent.
- 65.4. An employee is not liable to a prosecution for an offence under any Bylaw or Act
 - (a) for copying a Record or disclosing it to the Commissioner; or
 - (b) for disclosing information to the Commissioner,unless the employee acted in bad faith.
- 65.5. The Town or person acting on behalf of the Town shall not take any adverse employment action against an employee because the employee, acting in good faith,
 - (a) has disclosed information to the Commissioner under this section; or
 - (b) has exercised or may exercise a right under this section.
- 65.6. Every person who violates subsection (5) is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.
- 65.7. In carrying out an investigation and review under this section, the Commissioner has all of the powers and duties set out in sections 52, 56, 62, 63 and subsections 66(1), (2), (3)(a) to (d), (4) and (5), and sections 53 and 54 apply.

PART VII — GENERAL PROVISIONS

66. Manner of giving notice

- 66.1. Where this Bylaw requires any notice or other document to be given to a person, it is to be given
 - (a) by sending it to that person by prepaid mail to the last known address of that person;
 - (b) by personal service;
 - (c) by substituted service if so authorized by the Commissioner; or
 - (d) by means of a machine or device that electronically transmits a copy of a document, picture or other printed material by means of a telecommunications system.

67. Exercise of rights by other persons

- 67.1. Any right or power conferred on an individual by this Bylaw may be exercised
 - (a) if the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;

- (b) if a guardian or trustee has been appointed for the individual, by the guardian or trustee if the exercise of the right or power relates to the powers and duties of the guardian or trustee;
- (c) if a power of attorney has been granted by the individual, by the attorney if the exercise of the right or power relates to the powers and duties of the attorney conferred by the power of attorney;
- (d) if the individual is a minor, by a guardian of the minor in circumstances where, in the opinion of the CAO of the Town, the exercise of the right or power by the guardian would not constitute an unreasonable invasion of the personal privacy of the minor;
- (e) if the individual has appointed a proxy to make decisions on his or her behalf, by the proxy if the exercise of the right or power relates to the powers and duties of a proxy conferred by the *Consent to Treatment and Health Care Directives Act* R.S.P.E.I. 1988, Cap. C-17.2; or
- (f) by any person with written authorization from the individual to act on the individual's behalf.

67.2. Any notice required to be given to an individual under this Bylaw may be given to the person entitled to exercise the individual's rights or powers referred to in subsection (1).

68. Delegation by the CAO

68.1. The CAO may delegate to any person any duty, power or function of the CAO under this bylaw and FOIPP, except the power to delegate under this section.

68.2. A delegation under Subsection (1) must be in writing and may contain any conditions or restrictions the CAO considers appropriate.

69. Protection of the Town from legal suit

69.1. No action lies and no proceeding may be brought against the Town, the CAO, an elected official or appointed official of the Town, or any person acting for or under the direction of the CAO for damages resulting from

- (a) the disclosure of or failure to disclose, in good faith, all or part of a Record or information under this Bylaw or any consequences of that disclosure or failure to disclose; or
- (b) the failure to give a notice required under this Bylaw if reasonable care is taken to give the required notice.

70. Adverse employment action

70.1. A person acting on behalf of the Town shall not take any adverse employment action against an employee as a result of the employee properly disclosing information in accordance with this Bylaw or the regulations.

70.2. A person who violates subsection (1) is guilty of an offence and liable on summary conviction to a fine of not less than \$200 and not more than \$10,000.

71. Offences

- 71.1. A person shall not wilfully
- (a) collect, use or disclose Personal Information in violation of Part IV;
 - (b) attempt to gain or gain access to Personal Information in violation of this Bylaw;
 - (c) make a false statement to, or mislead or attempt to mislead, the Commissioner or another person in the performance of the functions of the Commissioner or other person under this Bylaw;
 - (d) obstruct the Commissioner or another person in the performance of the functions of the Commissioner or other person under this Bylaw;
 - (e) fail to comply with an order made by the Commissioner under section 63;
 - (f) disclose Personal Information to which this bylaw applies pursuant to a subpoena, warrant or order issued or made by a court, person or body having no jurisdiction in Prince Edward Island to compel the production of information or pursuant to a rule of court that is not binding in Prince Edward Island;
 - (g) destroy any Records subject to this Bylaw, or direct another person to do so, with the intent to evade a request for access to the Records; or
 - (h) alter, falsify or conceal any Record, or direct another person to do so, with the intent to evade a request for access to the Records.
- 71.2. A person who violates subsection (1) is guilty of an offence and liable on summary conviction to a fine of not less than \$200 and not more than \$10,000.

72. Fees

- 72.1. The CAO may require an applicant to pay to the Town fees for services as provided for in the FOIPP regulations.
- 72.2. Subsection (1) does not apply to a request for the applicant's own personal information, except for the cost of producing the copy.
- 72.3. If an applicant is required to pay fees for services under subsection (1), the Town shall give the applicant an estimate of the total fee before providing the services.
- 72.4. An applicant may, in writing, request that the CAO excuse the applicant from paying all or part of a fee for services under subsection (1).
- 72.5. The CAO may excuse an applicant from paying all or part of a fee if, in the opinion of the CAO,
- (a) the applicant cannot afford the payment or for any other reason it is appropriate to excuse payment; or
 - (b) the record relates to a matter of public interest, including the environment or public health or safety.

Open Government Bylaw

72.6. If an applicant has requested, under subsection (4), the CAO to excuse the applicant from paying all or part of a fee and the CAO has refused the applicant's request, the CAO shall notify the applicant in writing, within 30 days after receiving the request, that the applicant may ask for a review under Part VI of this Bylaw.

72.7. The fees referred to in subsection (1) shall not exceed the actual costs of the services.

73. Effective Date

73.1. This Bylaw is effective on April 1, 2019.

First Reading:

This Bylaw was read and formally approved by a majority of Council members present at the Council meeting held on the _____ day of _____, 2019.

Second Reading:

This Bylaw was read and formally approved by a majority of Council members present at the Council meeting held on the _____ day of _____, 2019.

Approval and Adoption by Council:

This bylaw was formally adopted by a majority of Council members present at the Council meeting held on the _____ day of _____, 2019.

This bylaw is hereby declared to be passed and proclaimed as a bylaw of the Town of Stratford on this _____ day of _____

Witness the corporate seal of the Town.

Mayor

Chief Administrative Officer

This Bylaw was filed with the Minister of Communities, Land and Environment on this ___ day of _____ 2019.

Schedule A – Open Government Bylaw

TOWN OF STRATFORD
REQUEST FOR DECISION



Imagine that!

Applicant

<i>Name:</i>	<i>Phone #:</i>
<i>Address:</i>	
<i>Email Address:</i>	

Issue

<i>Description of Issue:</i>
<i>Decision Requested:</i>

For Internal Use

RFD #

Request Path

Forwarded to Council Committee for Recommendation

Staff Liaison:

Staff Recommendation:

Council committee:

Committee Recommendation:

Forwarded to staff for Decision and Action

Staff member:

Decision and Action:

Forwarded to Council for Review prior to consideration (Section 5.1(c))

Recommendation:

Applicant Notified that issue is outside of Town's Jurisdiction

Applicant Notification

Applicant Notified By:

Date of Notification:

Schedule B – Open Government Bylaw



TOWN OF STRATFORD

OPEN DATA LICENCE

Imagine that!

You are encouraged to use the Information that is available under this licence with only a few conditions.

Using information under this licence

Use of any Information indicates your acceptance of the terms below.

The Information Provider grants you a worldwide, royalty-free, perpetual, non-exclusive licence to use the Information, including for commercial purposes, subject to the terms below.

You are free to

Copy, modify, publish, translate, adapt, distribute or otherwise use the Information in any medium, mode or format for any lawful purpose.

You must, where you do any of the above

Acknowledge the source of the Information by including any attribution statement specified by the Information Provider(s) and, where possible, provide a link to this licence.

If the Information Provider does not provide a specific attribution statement, or if you are using Information from several information providers and multiple attributions are not practical for your product or application, you must use the following attribution statement:

“Contains information licensed under the Town of Stratford Open Government Licence”.

The terms of this licence are important, and if you fail to comply with any of them, the rights granted to you under this licence, or any similar licence granted by the Information Provider, will end automatically.

Exemptions

This licence does not grant you any right to use:

- Personal Information;
- third party rights the Information Provider is not authorized to license;
- the names, crests, logos, or other official symbols of the Information Provider; and
- information subject to other intellectual property rights, including patents, trade-marks and official marks.

Non-Endorsement

This licence does not grant you any right to use the Information in a way that suggests any official status or that the Information Provider endorses you or your use of the Information.

No Warranty

The Information is licensed “as is,” and the Information Provider excludes all representations, warranties, obligations, and liabilities, whether express or implied, to the maximum extent permitted by law.

The Information Provider is not liable for any errors or omissions in the Information, and will not under any circumstances be liable for any direct, indirect, special, incidental, consequential, or other loss, injury or damage caused by its use or otherwise arising in connection with this licence or the Information, even if specifically advised of the possibility of such loss, injury or damage.

Governing Law

This licence is governed by the laws of the Province of Prince Edward Island and the applicable laws of Canada.

Legal proceedings related to this licence may only be brought in the courts of Prince Edward Island.

Definitions

In this licence, the terms below have the following meanings:

Information - means information, including data, that is offered for use under the terms of this licence.

Information Provider - means the Town of Stratford

Personal Information - has the meaning set out in this bylaw.

You - the natural or legal person or body of persons corporate or incorporate, acquiring rights under this licence.

Versioning

This is version 1.0 of the Town of Stratford Open Data Licence. The Information Provider may make changes to the terms of this licence from time to time and issue a new version of the licence. Your use of the Information will be governed by the terms of the licence in force as of the date you accessed the information.

Published date: March 13, 2019