

Town of O’Leary, PEI
A Bylaw to Regulate Access to Information and Protection of Personal Information
Bylaw # 2020-02

BE IT ENACTED by the Council of the Town of O’Leary as follows:

1. Title

- (1) This bylaw shall be known and cited as the “Access to Information and Protection of Personal Information Bylaw.”

2. Definitions

- (1) “Act” means the Municipal Government Act.
- (2) “Applicant” mean a person applying for access to information under the Act or this bylaw.
- (3) “Chief Administrative Officer” or “CAO” means the administrative head of the municipality as appointed by council under subsection 86(2)(c) of the *Municipal Government Act*.
- (4) “Coordinator” means an Access to Information and Protection of Privacy Coordinator appointed by Council in accordance with the Regulations and this bylaw.
- (5) “Council” means the Mayor and Councillors for the Municipality
- (6) “Development” means development as defined in the *Planning Act* R.S.P.E.I. 1988, Cap P-8.
- (7) “Law enforcement” means
 - (a) policing, including criminal intelligence operations,
 - (b) 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
 - (c) 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.
- (8) “Municipality” means the Town of O’Leary.
- (9) “Personal information” means personal information as defined in clause 1(i) of the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I., 1988, Cap. F-15.01, but does not include a person’s address.
- (10) “Record” means any information that a municipality is required to provide access to under subsection 147(1) of the *Municipal Government Act*.
- (11) “Regulations” mean the Access to Information and Protection of Personal Information Regulations under the Act.
- (12) “Third party” means a person, a group of persons or an organization other than an applicant or a municipality.

3. General

- (1) Records shall be available for public inspection at the office of the municipality during regular office hours.
- (2) Council shall not appoint a person to act as the Coordinator who is
 - (a) a member of Council; or
 - (b) the CAO of another municipality.
- (3) The Coordinator's duties shall include
 - (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 members of council and employees of the municipality with respect to the bylaw and the Act as it applies to access to information and the protection of personal information;
 - (d) assisting municipal staff in conducting searches in response to access to information applications;
 - (e) preparing fee estimates; and
 - (f) providing a written annual report to the council of the municipality 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. Application process for access to information

- (1) An application for access to information shall be made by the applicant, in writing, to the Coordinator.
- (2) An application for access to information shall
 - (a) provide sufficient detail to enable the Coordinator to identify the information sought, and
 - (b) indicate whether the applicant is requesting a photocopy of the information or to examine the information.
- (3) An application for access to information made under subsection 4(1) may be made by an application in electronic format where the Coordinator consents to receiving the application by electronic means.
- (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 that means.
- (5) The Coordinator may exempt an applicant from the requirement for requests to be made in writing for requests to access the records referred to in subsection 6(2) of this bylaw.

5. Entitlement to access

- (1) Subject to subsection 5(2) of this bylaw and subsection 6 (3) of the regulations, an applicant is entitled to access records and the Coordinator shall provide records that were created or

collected by the municipality which, at a minimum, includes access to the types of information referred to in subsection 147(1) of the Act.

- (2) An application for access to information that contains personal information of another individual or information of a third party, or information not referred to in subsection 6(2) of this bylaw shall be made to the Coordinator in accordance with the requirements of section 4.

6. Records available for inspection

- (1) Subject to the restrictions on information set out in subsection 6(3) of the Regulations, access to information includes, but is not limited to, records 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 negotiating position of a municipality;
 - (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;
 - (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) of the Act, and
 - (iii) are not subject to solicitor-client privilege.
- (2) The following records shall be available within two 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,
 - (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.
- (3) For records not included in subsection 6(2) of this bylaw to which access is authorized by the Act, the bylaw or any other Act; and where the information is reasonably accessible to the municipality, the Coordinator shall, within 30 days of the application for access to information,
- (a) provide the applicant with a written estimate of any fees that may be charged for copies of the record or document containing the information; and
 - (b) subject to the payment of any fees and deposit required under section 20 of this bylaw, allow the applicant access to the information.
- (4) Where, in the opinion of the Coordinator, the requested information cannot reasonably be accessed within 30 days of the date of receipt of the application, the Coordinator
- (a) shall inform the applicant, in writing, when the information will be accessible; and
 - (b) provide the applicant with a written estimate of any fees that will be charged for copies of the record or document containing the information.
- (5) Where the Coordinator refuses the application for access to information, the Coordinator shall provide the applicant with written notification of the reasons for the refusal and the provision of the Act or bylaw on which the refusal is based.

7. Application of bylaw

- (1) This bylaw applies to information that was created or collected on and after the coming into force of the Act by or otherwise under the control of the municipality.
- (2) This bylaw also applies to information that was created or collected prior to the coming into force of the Act by or otherwise under the control of the municipality, where that information was required to be public under previous legislation, including but not limited to:
 - (a) minutes of all meetings of council;
 - (b) audited financial statements,
 - (c) approved budgets;
 - (d) bylaws; and
 - (e) any information required to be shared publicly under section 23.1 of the *Planning Act*.

8. Inspection of records or documents

- (1) The inspection of records or documents containing the information requested by an applicant shall be made under the supervision of an employee of the municipality.
- (2) Subject to any fees that may be charged, copies of records or documents shall be provided by the municipality to an applicant on the request by the applicant as a photocopy of the record or document or by an electronic version of the record or document if available.

9. Records not available

- (1) Notwithstanding anything contained in this bylaw, no person, other than members of council or staff authorized by the CAO, shall have the right to inspect or obtain a copy of any record that:
 - (a) is subject to solicitor-client privilege;
 - (b) is a record of a closed meeting of council or a council committee where the matters discussed related to:
 - (i) commercial information which, if disclosed, would likely be prejudicial to the municipality or parties involved;
 - (ii) information received in confidence which, if disclosed, would likely be prejudicial to the municipality or parties involved;
 - (iii) personal information, other than a person's address, that is protected under the Act;
 - (iv) relates to confidential human resource matters relating to specific employees;
 - (v) is a matter still under consideration, on which the council has not yet publicly announced a decision, and about which discussion in public would likely prejudice a municipality's ability to carry out its negotiations;
 - (vi) relates to the conduct of existing or anticipated legal proceedings;
 - (vii) relates to the conduct of an investigation under, or enforcement of, an Act or bylaw;
or
 - (viii) is information which, if disclosed, could prejudice security and the maintenance of the law.
- (2) The minutes of a closed meeting shall be made available to the public and shall be restricted to
 - (a) the date of the meeting;
 - (b) the type of matter under subsection 119(1) of the Act that was discussed during the meeting; and
 - (c) who was present at the meeting.
- (3) The municipality shall make public, when confidentiality is no longer required, any matter which has been considered at a council or council committee meeting closed to the public pursuant to subsection 119(4) of the Act.

10. Personal information contained within records

- (1) No personal information, except a person's address, that is included in any of the types of records listed in subsection 6(2) of this bylaw shall be disclosed except

- (a) to the person whose personal information it is;
 - (b) to a person authorized in writing by that person; or
 - (c) in accordance with this bylaw.
- (2) A person's address shall only be disclosed where the person's address is pertinent to the matter being considered by council, including matters such as:
- (a) an application made pursuant to an official plan and bylaw where the address is the subject of the application;
 - (b) a matter dealing with the enforcement of a bylaw where the address is the subject of the discussion.

11. Authority to collect personal information

- (1) No personal information may be collected 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 municipality;
 - (b) the information relates directly to and is necessary for operating a program or activity of the municipality; or
 - (c) the information is collected for the purposes of law enforcement.

12. Manner of collection of personal information

- (1) All personal information shall be collected directly from the individual to whom it relates unless
- (a) the information may be disclosed to the municipality under the *Freedom of Information and Protection of Privacy Act*;
 - (b) another method of collection is authorized by that individual or by an enactment or bylaw referred to in clause 12(1)(a);
 - (c) the information is necessary to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the municipality and is collected in the course of processing an application made by or on behalf of the individual the information is about, or to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the municipality and is collected for that purpose;
 - (d) the information is collected for the purpose of collecting a fine or a debt owed to the municipality;
 - (e) the information is collected for the purpose of managing or administering personnel of the municipality;
 - (f) the information concerns an individual who is designated as a person to be contacted 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.

- (2) Where personal information is collected directly from an individual under subsections 11(1) or 12(1), the individual is to 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 municipality who can answer the individual's questions about the collection.

13. Use of personal information

- (1) Where an individual's personal information is used by the municipality, the municipality 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 records retention bylaw of the municipality.
- (2) For greater certainty, a reference in this section and in sections 14, 16 and 17 to the collection, use or disclosure of personal information by the municipality includes the collection, use or disclosure of the personal information by
 - (a) an employee of the municipality;
 - (b) a volunteer, including a volunteer firefighter;
 - (c) a person appointed to conduct an inquiry under subsection 217(2) of the Act;
 - (d) a supervisor appointed under subsection 219(2) of the Act; and
 - (e) an official trustee appointed under subsection 220(1) of the Act.

14. Correction to personal information

- (1) An individual has the right to request that the coordinator correct personal information where the individual believes there is an error or omission in the individual's personal information.
- (2) The coordinator is prohibited from correcting or otherwise altering an opinion included in an individual's personal information, including a professional or expert opinion.
- (3) A request for a correction to personal information shall be made in writing by the individual whose personal information it is, or by an authorized person on that individual's behalf.
- (4) A request for a correction to personal information shall provide sufficient detail to enable the coordinator to identify the personal information that is the subject of the request.
- (5) A request in writing may be satisfied by a request in electronic format where the coordinator consents to receiving the request by electronic means.
- (6) Subsequent communications between an 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.
- (7) The coordinator shall make the correction requested in accordance with the procedure specified in section 15 unless prohibited by law from doing so.

15. Record of a request to correct personal information

- (1) Following a request to correct personal information
 - (a) where a correction is made in response to a request under subsection 14(1), the coordinator shall make a notation either on the record or document in question or attached to it that a correction has been requested and made; or
 - (b) where no correction is made in response to a request under subsection 14(1), or a correction is prohibited under subsection 14(2), the coordinator shall make a notation that there was a request to make a correction to the individual's personal information either on the record or document in question or attached to it.
- (2) Within 60 days after the request under subsection 14(1) is received, the coordinator shall give written notice to the individual that
 - (a) the correction has been made under clause 15(1)(a); or
 - (b) no correction has been made under clause 15(1)(b).
- (3) The coordinator shall notify any third party to whom personal information has been disclosed within the preceding year that a request to correct that personal information has been made and the decision that was made in response to the request.
- (4) Notwithstanding subsection (3), the Coordinator may dispense with notifying a third party as required in that subsection 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 the correction is advised and agrees in writing that notification is not necessary.
- (5) Where the personal information that is the subject of a request for correction was collected by another party or another party created the record or document containing the personal information, the coordinator may, within 30 days from receiving the request to correct the personal information under section 14, transfer the request to that party.
- (6) Where a request is transferred under subsection 15(5), the Coordinator shall notify the individual of the transfer as soon as possible.

16. Protection of personal information

- (1) The CAO shall ensure that personal information is protected by making reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, disposal or destruction of personal information
- (2) In order to ensure that personal information is protected, the municipality 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 to whom the information pertains has identified the information and consented, in writing, to the use;
 - (c) for a purpose for which that information may be disclosed by the municipality under section 17; or

- (d) to the extent necessary to enable the municipality to carry out its purpose in a reasonable manner.

17. Disclosure of personal Information

- (1) The municipality may disclose personal information only:
 - (a) for the purpose of complying with the Act or the 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 municipality;
 - (g) for the purpose of managing or administering personnel of the municipality 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; or
 - (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.
- (2) The municipality may disclose personal information about an individual
 - (a) when the information is available to the public;
 - (b) if the information is of a type that is routinely disclosed in a business or professional context and the disclosure is
 - (i) limited to the 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; or
 - (c) 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.
- (3) For the purposes of sections 16 and 17, a use or disclosure of personal information is consistent with the purpose for which the personal 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 an authorized program of, the municipality that uses or discloses the personal information.

- (4) Notwithstanding any other provision of this bylaw in relation to the protection of personal information
 - (a) the municipality may disclose personal information in an individually identifiable form for a research purpose, including statistical research, only 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 CAO has approved conditions relating to the following:
 - (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
 - (b) the person to whom the information is disclosed has signed an agreement to comply with the approved conditions, the Act, the bylaw and any other bylaws, policies and procedures of the municipality relating to the confidentiality of personal information.
- (5) The only personal information that a municipality shall disclose to an applicant in relation to a third party is information authorized to be disclosed under the Act or the bylaw made in accordance with the Regulations.
- (6) The Coordinator may refuse to disclose to an applicant
 - (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 municipality in confidence about a threat to an individual's safety or mental or physical health.

18. Complaints

- (1) An individual who believes that the individual's personal information has been collected, used or disclosed, or has not been corrected, in contravention of the Act or the bylaw may, in writing, file a complaint with the council of the municipality and request that a review of the matter be conducted.

19. Adjudicator

- (1) Upon receiving a complaint and a request for a review of the matter referred to in subsection 18(1), the council of the municipality shall, by resolution and as soon as practicable, appoint an adjudicator.
- (2) The adjudicator referred to in subsection 19(1) shall be an independent third party.
- (3) All costs associated with the review of the complaint by the adjudicator, including the fees and expenses of the adjudicator, shall be the responsibility of the municipality.
- (4) The adjudicator has authority to decide all questions of fact and law arising during the course of the review.
- (5) The individual requesting the review and the municipality shall be given the opportunity to make representations to the adjudicator.
- (6) No person, other than the individual who requested the review and the municipality is entitled to be present during, to have access to or to comment on representations made to the adjudicator, except with the written consent of both parties.
- (7) The adjudicator has the authority to decide whether the representations may be made orally, in writing or both.
- (8) The individual who requested the review and the municipality may be represented by legal counsel or an agent.
- (9) The adjudicator's review shall be completed within 90 days after the council of the municipality receives the request unless the adjudicator
 - (a) notifies the individual who requested the review and the municipality that the adjudicator is extending that period; and
 - (b) provides an anticipated date for the completion of the review.
- (10) Upon completion of the review, the adjudicator shall issue a decision, in writing, including reasons for the decision, ordering one or more of the following:
 - (a) that the municipality not correct the personal information of the individual who requested the review;
 - (b) that the municipality correct the personal information of the individual who requested the review;
 - (c) that the municipality stop collecting, using or disclosing personal information in contravention of the Act or the bylaw;
 - (d) that the CAO destroy personal information collected in contravention of the Act or the bylaw;
 - (e) that the complaint be dismissed.
- (11) In addition to the order referred to in subsection 19(10), the adjudicator may make other recommendations that the adjudicator determines appropriate.
- (12) The adjudicator shall provide a copy of the decision

- (a) to the person who requested the review;
 - (b) to the CAO of the municipality concerned; and
 - (c) to the council of the municipality concerned.
- (13) The municipality shall comply with the decision not later than 40 days after being given a copy of a decision of the adjudicator except
- (a) the municipality 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. 1988 Cap. J-3; and
 - (b) if an application for judicial review is made before the end of the period referred to in clause (a), the decision of the adjudicator is stayed until the application is dealt with by the court.
- (14) The adjudicator may, at any time during the review, attempt to informally resolve the complaint referred to in section 18.

20. Fees

- (1) At no time shall an applicant be charged fees that exceed the actual cost of the services and materials provided by the Municipality.
- (2) An applicant requesting a record or document shall pay to the Municipality the fees set out in Schedule 1 for the purpose of
 - (a) locating, retrieving and producing the record;
 - (b) preparing the record for disclosure;
 - (c) shipping and handling the record;
 - (d) supervising the examination of records; and
 - (e) providing copies of the record.
 - (f) Note: the municipality may choose to keep both, either, or neither of the following two provisions.
- (3) All fees associated with a request shall be paid before the release of the copies of the records or documents.
- (4) Notwithstanding any other provision of this Bylaw, fees do not apply to requests for an applicant's own personal information, except for photocopying fees.
- (5) An applicant may, in writing, request that the coordinator waive all or part of the fee for a specified request, and
 - (a) the Coordinator may waive all or part of the fee, if in the coordinator's opinion
 - (i) the applicant cannot afford to pay the fee or for any reason it is appropriate, or
 - (ii) the record or document containing the information relates to a matter of public interest, including public health, safety or environment

21. Effective Date

(1) This Bylaw shall be effective as of the date of adoption / April 1, 2020 (pick one of the options).

22. Repeal (Optional)

(1) Bylaw # _____ not applicable _____ is hereby repealed.

23. Approval

First Reading:

This Access to Information and Protection of Privacy Bylaw, Bylaw# 2020-02, was read a first time at the Council meeting held on the 15th day of January, 2020.

This Access to Information and Protection of Privacy Bylaw, Bylaw# 2020-02, was approved by a majority of Council members present at the Council meeting held on the 15th day of January, 2020.

Second Reading:

This Access to Information and Protection of Privacy Bylaw, Bylaw# 2020-02, was read a second time at the Council meeting held on the 12th day of February, 2020.

This Access to Information and Protection of Privacy Bylaw, Bylaw# 2020-02, was approved by a majority of Council members present at the Council meeting held on the 12th day of February, 2020.

Adoption and Approval by Council:

This Access to Information and Protection of Privacy Bylaw, Bylaw# 2020-02, was adopted by a majority of Council members present at the Council meeting held on the 12th day of February, 2020.

This Access to Information and Protection of Privacy Bylaw, Bylaw# 2020-02, is declared to be passed on this the 12th day of February, 2020.

____ Eric Gavin _____
Mayor (signature sealed)

____ Beverley Shaw _____
Chief Administrative Officer (signature sealed)

This Access to Information and Protection of Personal Information Bylaw # 2020-02 adopted by the Council of the Town of O’Leary on 12th day of February, 2020, is certified to be a true copy.

____ Beverley Shaw _____
Chief Administrative Officer Signature

____ February 12, 2020 _____
Date

Schedule 1 – Fees for accessing or copies of records

Type of information	Timeframe	Photocopying / printing	Services/Time	Deposit
Category I – available on demand (bylaw subsection 6(2))	Office hours/as agreed to between applicant and Coordinator if no office hours	Max \$0.08 per page	No charge permitted	All fees must be paid up front (remove if this will not be required)
Category II – readily available but not necessarily on hand – (bylaw subsection 6(3)) or available on demand under 6(2) but older than two years	30 days from application to when the fee estimate and access to records or copies if requested must be provided to applicant	Max \$0.08 per page	<ul style="list-style-type: none"> • Fees related to locating, retrieving and producing the information • Fees related to preparing the information for disclosure • Fees related to supervising the examination of information FEE	All fees must be paid up front
Category III – Information that cannot reasonably be accessed within 30 days of the application (Bylaw subsection 6(4))	30 days from application the estimate of time and the written estimate of fees must be provided to applicant	Max \$0.08 per page	<ul style="list-style-type: none"> • Fees related to locating, retrieving and producing the information • Fees related to preparing the information for disclosure • Fees related to supervising the examination of information FEE	All fees must be paid up front
Category IV – applicant’s own personal information (subsection 10(3) of the Regulations)		Max \$0.08 per page	No charge permitted	All fees must be paid up front .

