

**WESTBANK FIRST NATION
FREEDOM OF INFORMATION AND
PROTECTION OF PRIVACY
2018**

WESTBANK FIRST NATION
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY LAW NO. 2018

WHEREAS Westbank First Nation deems it advisable and in its best interests to enact a Law to provide reasonable access to Qualifying Persons, to information held by Westbank First Nation; and

WHEREAS Westbank First Nation further deems it advisable and in its best interests to enact a Law to protect the privacy of any individual whose personal information is held by Westbank First Nation;

NOW THEREFORE Westbank First Nation Council enacts the following law:

PART I – INTRODUCTORY PROVISIONS

1. TITLE

- 1.1 This Law may be cited for all purposes as the “*WFN Freedom of Information and Protection of Privacy Law No. 2018*”.

2. DEFINITIONS

- 2.1 In this Law, unless the context otherwise requires:

“**Adjudicator**” means a person appointed under section 5.1 of the *WFN Dispute Adjudication Law No. 2008-01*;

“**Adjudicator Review**” means the review process established under the *WFN Dispute Adjudication Law No. 2008-01*;

“**Contact Information**” means information to enable an individual to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of that individual;

“**Frivolous**” means not having any serious purpose of value;

“**Law Enforcement**” means policing, investigations that lead or could lead to a penalty or sanction being imposed under an enactment, or proceedings that lead or could lead to a penalty or a sanction being imposed under an enactment;

“**Member**” means a person registered on the Membership Roll under Part III of the *Westbank First Nation Constitution*.

“**Personal Information**” means recorded information about an identifiable individual other than Contact Information;

“**Privacy Officer**” means a person appointed by Council resolution, upon the recommendation of the Director of Operations, to monitor the administration of this Law;

“Qualifying Person” means a person of at least eighteen (18) years of age, other than a Member, whom the Privacy Officer determines to be directly and significantly affected by information contained in a Record in the custody or under the control of the Westbank First Nation Government;

“Record” includes books, documents, maps, drawings, photographs, letters, electronic mail, vouchers, papers and any other thing on or in which information is recorded or stored by graphic, electronic, mechanical or other means but does not include a computer program or any mechanism that produces records;

“Third Party” in relation to a request for access to a Record or for correction of Personal Information, means any person, group of persons or organization other than:

- (a) the person who made the request; or
- (b) Westbank First Nation;

“Vexatious” means causing or tending to cause annoyance, frustration, or worry;

“Worker” refers to a person who is a Westbank First Nation employee, volunteer, contractor, client or other visitor, who performs tasks or provides services on behalf of Westbank First Nation;

2.2 Unless otherwise provided in this Law, words, expressions and rules of construction used in this Law have the same meaning as in the *Westbank First Nation Constitution*.

3. PURPOSE

3.1 Westbank First Nation must be accountable to Members and to Qualifying Persons and protect personal privacy by:

- (a) providing Members and Qualifying Persons with a right of access to Records in the custody or under the control of Westbank First Nation;
- (b) giving individuals a right of access to and a right to request correction of Personal Information about themselves;
- (c) preventing the unauthorized collection, use, retention, disclosure and disposal of Personal Information by the Westbank First Nation; and
- (d) providing for an independent review of the operation of this Law.

3.2 Westbank First Nation must ensure that the purpose of this Law is effectively and efficiently achieved at reasonable cost.

3.3 This Law supplements, and does not replace, any provisions in other Westbank First Nation enactments that are in place to ensure that Westbank First Nation upholds Westbank First Nation values and the guiding principles set out in the *Westbank First Nation Constitution*.

4. SCOPE

- 4.1 Subject to sections 5 and 6, this Law applies to all Records in the custody or under the control of Westbank First Nation, but does not apply to any Record that Westbank First Nation makes subject to the freedom of information and protection of privacy enactment of another government by way of written agreement with that government.
- 4.2 This Law does not limit access to Records in the custody or under the control of Westbank First Nation to which Members or the general public has a right of access under another Westbank First Nation enactment.
- 4.3 This Law does not limit the information available by law to a party to a judicial or administrative proceeding under a Westbank First Nation, federal, or provincial enactment or otherwise by law.
- 4.4 This Law does not restrict Westbank First Nation from providing access to information, other than Personal Information, which Westbank First Nation decides to make available to the general public.
- 4.5 This Law does not apply to the following:
- (a) a Record in judicial or adjudicative proceedings;
 - (b) a personal note, communication, or draft decision of a person acting in a judicial or adjudicative capacity;
 - (c) a Record that is created by or for, or is in the custody or under the control of an officer, director, or member of Council, and that relates to the exercise of that individual's functions under Westbank First Nation Law;
 - (d) a Record of a question that is to be used on an examination or test;
 - (e) a Record containing teaching materials or research information of employees within an educational body;
 - (f) a Record relating to a prosecution if all proceedings in respect of the prosecution have not been completed.

PART 2 – FREEDOM OF INFORMATION

5. INFORMATION RIGHTS AND HOW TO EXERCISE THEM

- 5.1 A Member or Qualifying Person who makes a request under section 6 has a right of access to any Record in the custody or under the control of Westbank First Nation, including a Record containing Personal Information about the requestor.
- 5.2 For the purposes of section 5.1, the Privacy Officer may determine who is a Qualifying Person.

- 5.3 The right of access to a Record does not extend to information excepted from disclosure under section 13, but if that information can reasonably be severed from a Record a requestor has the right of access to the remainder of the Record.
- 5.4 The right of access to a Record is subject to the payment of any fee that may be required by regulation or policy under section 33.

6. HOW TO MAKE A REQUEST

- 6.1 To obtain access to a Record, a requestor must make a written request to the Privacy Officer and provide in that request:
- (a) sufficient detail to enable the Privacy Officer with a reasonable effort, to identify the Record sought; and
 - (b) written proof of the requestor's authority to make the request, if the requestor is acting on behalf of another person, in accordance with the regulation or policy.
- 6.2 The requestor may ask for a copy of the Record or ask to examine the Record.

7. DUTY TO ASSIST REQUESTORS

- 7.1 The Privacy Officer must make reasonable effort to assist requestors and to respond without delay to each requestor openly, accurately, and completely.
- 7.2 The Privacy Officer must create a Record for a requestor if:
- (a) the Record can be created from a computer Record in the custody or under the control of Westbank First Nation, using its customary computer hardware, software, and technical expertise; and
 - (b) creating the Record would not unreasonably interfere with the operations of the Westbank First Nation.

8. TIME LIMIT FOR RESPONSE

- 8.1 The Privacy Officer must respond not later than forty five (45) days after receiving a request described in section 6.
- 8.2 The Privacy Officer is not required to comply with section 8.1 if the time limit for providing a response is extended under section 11.

9. CONTENTS OF RESPONSE

9.1 In a response under section 7, the Privacy Officer must tell the requestor:

- (a) whether the Record exists;
- (b) whether or not the requestor is entitled to access the Record or to part of the Record;
- (c) if the requestor is entitled to access, where, when and how access will be given; and
- (d) if access to the Record or to part of the Record is refused:
 - (i) the reasons for the refusal and the provision of this Law on which the refusal is based, and
 - (ii) that the requestor may ask for a review under section 27.

9.2 Despite section 9.1(d)(i), the Privacy Officer may refuse in their response to a request, to confirm or deny the existence of a Record containing:

- (a) information described in section 13.1(c); or
- (b) Personal Information of a Third Party if disclosure of the existence of the information would be an unreasonable invasion of that Third Party's personal privacy.

9.3 If a Record referred to in section 9.1(a) does not exist, the Privacy Officer must confirm to the requestor that the requested Record does not exist.

10. HOW ACCESS WILL BE GIVEN

10.1 If a requestor is advised under section 9.1 that access will be given, the Privacy Officer must comply with section 10.2 or 10.3 of this section, as applicable.

10.2 If the requestor has asked for a copy of a Record under section 6.2 and the Record can reasonably be reproduced:

- (a) a copy of that Record or part of it must be provided with the response; or
- (b) the requestor must be given reasons for the delay in providing the Record.

10.3 If the requestor has asked to examine a Record under section 6.2, or if the Record cannot reasonably be reproduced, the requestor must:

- (a) be permitted to examine that Record or part of it; or
- (b) be given access in accordance with the regulation or policy, including any regulation or policy regarding photocopying fees.

11. EXTENDING THE TIME LIMIT FOR RESPONSE

- 11.1 The Privacy Officer may extend the time for responding to a request for an additional forty five (45) days, if one (1) or more of the following apply:
- (a) the requestor does not give enough detail to enable the Privacy Officer to identify a requested Record;
 - (b) a large number of Records are requested or must be searched and meeting the time limit would unreasonably interfere with the operations of Westbank First Nation; or
 - (c) more time is needed to consult with a Third Party before the Privacy Officer can decide whether or not to give the requestor access to a requested Record.
- 11.2 In addition to the authority under section 11.1, the Privacy Officer may extend the time for a reasonable period for responding to a request as follows:
- (a) if one (1) or more of the circumstances described in section 11.1 apply, for a period permitted under that subsection;
 - (b) if the Privacy Officer otherwise considers that it is fair and reasonable to do so.
- 11.3 If the time for responding to a request is extended under this section, the Privacy Officer must:
- (a) tell the requestor the reason for the extension and when a response can be expected; and
 - (b) notify the requestor that they may apply for an Adjudicator Review of the extension.

12. ROUTINE DISCLOSURE OF RECORDS

- 12.1 The Privacy Officer must make every effort to regularly post on a website information generated by Westbank First Nation that would be available, if requested, under this Law or that contains records that have been disclosed under this Law and that could reasonably be expected to be of interest to the general public.

13. EXCEPTIONS

- 13.1 Subject to section 13.2, the Privacy Officer may refuse to disclose information to a requestor if that disclosure could reasonably be expected to:
- (a) divulge the substance of deliberations of Council;
 - (b) divulge policy advice or recommendations;
 - (c) harm a Law Enforcement matter;

- (d) disclose information that is subject to solicitor-client privilege;
- (e) harm the intergovernmental relations or negotiations of Westbank First Nation;
- (f) harm the financial or economic interests of Westbank First Nation;
- (g) result in damage to, or interfere with, the conservation of archaeological human remains and burial objects, natural sites, or an endangered, threatened or vulnerable species, subspecies or race of plants, vertebrates or invertebrates, or any other rare or endangered living resources;
- (h) harm the spiritual or cultural practices of the Westbank First Nation; or
- (i) harm individual or public safety.

13.2 The Privacy Officer must refuse to disclose information to a requestor if that disclosure could reasonably be expected to:

- (a) harm the commercial or financial interests of a Third Party; or
- (b) invade a Third Party's personal privacy.

14. INFORMATION MUST BE DISCLOSED IF IN THE PUBLIC INTEREST

14.1 Whether or not a request for access is made, the Privacy Officer must, without delay, disclose to the public, to an affected group of people, or to a requestor, information:

- (a) about a risk of significant harm to the environment or to public health or safety; or
- (b) the disclosure of which is, for any other reason, clearly in the public interest.

14.2 Section 14.1 applies despite any other provision of this Law.

14.3 Before disclosing information under section 14.1, the Privacy Officer must, if feasible, notify:

- (a) any Third Party to whom the information relates; and
- (b) Council.

14.4 If it is not feasible to comply with section 14.3, the Privacy Officer must send a notice of disclosure in the form prescribed by regulation or policy:

- (a) to the last known method of contact of the Third Party; and
- (b) to Council.

**PART 3 – COLLECTION, PROTECTION AND RETENTION OF PERSONAL INFORMATION BY
WESTBANK FIRST NATION**

15. PURPOSE FOR WHICH PERSONAL INFORMATION MAY BE COLLECTED

15.1 Personal Information may not be collected by or for Westbank First Nation, unless:

- (a) the collection of that information is expressly authorized under a Westbank First Nation enactment;
- (b) that information is collected for the purposes of Law Enforcement;
- (c) that information relates directly to, and is necessary for, an operating program, service, or other activity of Westbank First Nation; or
- (d) that information is collected by observation at a presentation, ceremony, athletic event, performance, or similar event at which:
 - (i) the individual voluntarily appears;
 - (ii) the event is open to all Members; or
 - (iii) the event is open to all Members and the general public.

16. HOW PERSONAL INFORMATION IS TO BE COLLECTED

16.1 Westbank First Nation must collect Personal Information or cause Personal Information to be collected directly from the individual to whom the identifiable individual information pertains, unless:

- (a) another method of collection is authorized by:
 - (i) that individual; or
 - (ii) another enactment.
- (b) the collection of the information is necessary for the medical treatment of an individual and it is not possible:
 - (i) to collect the information directly from that individual; or
 - (ii) to obtain authority under section 16.1(a)(i) for another method of collection, or
- (c) the information is collected for the purposes of:
 - (i) determining suitability for an honour or award, including an honorary degree, a scholarship, a prize or a bursary;

- (ii) a proceeding before an adjudicative body;
- (iii) collecting a debt or fine or making a payment; or
- (iv) Law Enforcement.

16.2 Westbank First Nation must ensure that an individual from whom it collects Personal Information or causes Personal Information to be collected is advised of:

- (a) the purpose for collecting it;
- (b) the legal authority for collecting it; and
- (c) who can answer the individual's questions about the collection.

16.3 Section 16.2 does not apply if:

- (a) the information is about Law Enforcement;
- (b) Council excuses a public body from complying with that section because doing so would:
 - (i) result in collection of inaccurate information; or
 - (ii) defeat the purpose or prejudice the use for which the information is collected; or
- (c) the information:
 - (i) is not required under section 16.1 to be collected directly from the individual the information is about; and
 - (ii) is not collected directly from the individual about whom the information has been collected.

17. ACCURACY OF PERSONAL INFORMATION

17.1 If an individual's Personal Information is in the custody or under the control of Westbank First Nation, Westbank First Nation must make reasonable efforts to ensure that the Personal Information is accurate and complete.

18. RIGHT TO REQUEST CORRECTION OF PERSONAL INFORMATION

18.1 An individual who believes there is an error in their Personal Information may request the Privacy Officer to correct the information and the Privacy Officer may correct the information if they reasonably believe the correction is necessary.

19. PROTECTION OF PERSONAL INFORMATION

- 19.1 Westbank First Nation must protect the Personal Information in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, or disposal.

20. UNAUTHORIZED DISCLOSURE PROHIBITED

- 20.1 A director, officer, or Worker of Westbank First Nation who has access to Personal Information in the custody or under the control of Westbank First Nation, must not disclose that information except as authorized by this Law.

21. NOTIFICATION OF UNAUTHORIZED DISCLOSURE

- 21.1 A director, officer, or Worker of Westbank First Nation who knows that there has been an unauthorized disclosure of Personal Information in their custody or under their control must immediately notify the Privacy Officer.

PART 4 – USE AND DISCLOSURE OF PERSONAL INFORMATION BY WESTBANK FIRST NATION

22. USE OF PERSONAL INFORMATION

- 22.1 Westbank First Nation must ensure that Personal Information in its custody or under its control is used only:
- (a) for the purposes for which that information was obtained or compiled, or for uses consistent with that purpose; or
 - (b) if the individual the information is about has identified the information and has consented to its use.

23. DISCLOSURE OF PERSONAL INFORMATION

- 23.1 Westbank First Nation must ensure that Personal Information in its custody or under its control is disclosed only as permitted under this section.
- 23.2 Westbank First Nation may disclose Personal Information in its custody or under its control as follows:
- (a) for the purpose for which it was obtained or compiled, or for a use consistent with that purpose;

- (b) if the individual the information is about has consented in writing to the disclosure of that information;
- (c) in accordance with a Westbank First Nation enactment or a federal or provincial enactment;
- (d) in accordance with a provision of an arrangement or agreement that:
 - (i) authorizes or requires its disclosure; and
 - (ii) is made under a Westbank First Nation Law or other enactment, or a federal or provincial enactment;
- (e) to comply with a subpoena, warrant, or order issued or made by a court, person or body in Canada with jurisdiction to compel production of information;
- (f) to a public body or Law Enforcement agency in Canada to assist in a specific investigation:
 - (i) undertaken with a view to a Law Enforcement proceeding; or
 - (ii) from which a Law Enforcement proceeding is likely to result;
- (g) to a director, officer, or Worker of Westbank First Nation, or to Council, if the information is necessary for the performance of the duties of that director, officer, Worker, or member of Council,
- (h) provided that the information was collected by observation at a presentation, ceremony, performance, sports meet or similar event at which:
 - (i) the individual voluntarily appears; and
 - (ii) the event is open to all Members and/or the general public.

23.3 Despite section 23.1, if disclosure for a specific statistical or research purpose is clearly in the interest of Westbank First Nation, and there is no alternative to disclosing the information in individually identifiable form, Council may authorize the disclosure, subject to any restrictions or conditions that Council considers advisable.

24. DEFINITION

- 24.1 In sections 22 and 23, "consistent with that purpose" means the use of Personal Information is consistent with the purpose for which the information was obtained or compiled, if the use:
- (a) has a reasonable and direct connection to that purpose, and
 - (b) is necessary for carrying out the statutory duties, functions, and obligations of the Westbank First Nation department that uses or discloses the information, or causes the information to be used or disclosed.

25. RIGHT OF ACCESS TO PERSONAL INFORMATION

- 25.1 Every individual has the right to, and must on written request be given access to view and obtain a copy of, Personal Information about that individual in a Record in the custody or under the control of Westbank First Nation, if:
- (a) the Personal Information was supplied by that individual; or
 - (b) disclosure of the information to the individual is reasonably expected not to be inconsistent with section 13.2.
- 25.2 The Privacy Officer may establish standards, policies, procedures, and reasonable timelines considered necessary with respect to viewing and copying Personal Information.

26. POWER TO DISREGARD REQUESTS

- 26.1 The Privacy Officer may, by regulation or policy, disregard requests that would unreasonably interfere with the operations of Westbank First Nation because those requests are:
- (a) repetitious or systematic in nature; or
 - (b) Frivolous or Vexatious.

PART 5 – REVIEW AND COMPLAINTS

27. RIGHT TO REQUEST A REVIEW

- 27.1 A person who makes a request to the Privacy Officer for access to a Record, or who makes a request for correction of Personal Information, may request an Adjudicator Review of any decision, act, or failure to act of the Privacy Officer that relates to that request.
- 27.2 An Adjudicator Review requested under section 27.1 must proceed in accordance with the *WFN Dispute Adjudication Law No. 2008-01*.

28. IMPROPER USE

- 28.1 An individual may submit a written complaint to the Privacy Officer if they believe that Westbank First Nation has improperly collected, used, disclosed, retained or disposed of their Personal Information.

29. HOW TO REQUEST A REVIEW

- 29.1 To request a review under this Part, a written request must be delivered to the Director of Operations.
- 29.2 A request for a review of a decision of the Privacy Officer must be delivered within forty five (45) days of the person asking for the review being notified of the decision of the Privacy Officer.
- 29.3 The failure of the Privacy Officer to respond in time to a request for access to a Record is to be treated as a decision to refuse access to the Record, but the time limit referred to in section 29.2 for delivering a request for review does not apply.

30. NOTIFYING OTHERS OF REVIEW

- 30.1 On receiving a request for a review, the Director of Operations must give a copy to
- (a) Council; and
 - (b) the Adjudicator appointed by Council to complete the review.

31. INQUIRY BY THE ADJUDICATOR

- 31.1 On being appointed to complete a review under section 30, the Adjudicator may make any decision that the Privacy Officer may have made, including denying the request.

32. DENIAL BY THE ADJUDICATOR

- 32.1 If the Adjudicator denies a request, they must:
- (a) within forty five (45) days of making a decision, provide the requestor with a copy of the decision; and
 - (b) provide the Privacy Officer, Director of Operations, and Council with a copy of the decision.

PART 6 – GENERAL PROVISIONS

33. REGULATIONS OR POLICIES

33.1 The Privacy Officer may make regulations or policies they consider advisable for the purposes of this Law, and, without limitation, may make regulations or policies in respect of the following:

- (a) the normal business hours for the examination of Records;
- (b) standards to ensure reasonable access to Records;
- (c) procedures to be followed for access to Records;
- (d) the destruction of Records;
- (e) categories of Records and publication schemes;
- (f) reasonable restrictions with respect to inspections of Records and the protection of Personal Information;
- (g) reasonable fees for copies and other services provided in respect of Records; and
- (h) any other matter the Privacy Officer considers advisable for the operation of this Law.

34. RELATIONSHIP OF THIS LAW TO OTHER LAWS

34.1 If a provision of this Law is inconsistent or in conflict with a provision of another Westbank First Nation Law, the provisions of this Law prevail unless the other Westbank First Nation Law expressly provides that it, or a provision of it, applies despite this Law.

35. OFFENCES AND PENALTIES

35.1 A person must not willfully do any of the following:

- (a) make a false statement to, or mislead or attempt to mislead, Council, the Privacy Officer, or any other individual in the performance of that other individual's duties, powers or functions under this Law;
- (b) obstruct Council, the Privacy Officer, or any other individual in the performance of their duties, powers or functions under this Law;
- (c) disclose Personal Information in contravention of this Law.

- 35.2 Any employee of Westbank First Nation who contravenes any section of this Law is liable to disciplinary action to be determined by the Director of Operations, as set out in the Westbank First Nation Personnel Policy Manual.
- 35.3 In addition to any other penalty, a person who contravenes section 35.1 is guilty of an offence and is liable upon summary conviction for a fine of up to ten thousand dollars (\$10,000.00), or a term of imprisonment not exceeding thirty (30) days, or both.

36. IMMUNITY

- 36.1 No action for damages lies or may be instituted against present or past Council; employees, servants or agents of either Westbank First Nation or Council:
- (a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's authority; or
 - (b) default in the performance or intended performance of the person's duty or the exercise of the person's authority.
- 36.2 Section 36.1 does not provide a defence if:
- (a) Council, employees, servants or agents have, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct; or
 - (b) the cause of action is libel or slander.
- 36.3 Westbank First Nation, present or past Council, or members, employees, servants or agents of any of Westbank First Nation or Council is not liable for any damages or other loss, including economic loss, sustained by any person, or to the property of any person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other Westbank First Nation Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Westbank First Nation Law.
- 36.4 All actions against Westbank for the unlawful doing of anything that:
- (a) is purported to have been done by Westbank First Nation under the powers conferred by this Law or any Westbank First Nation Law; and
 - (b) might have been lawfully done by Westbank First Nation if acting in the manner established by law.
- must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.
- 36.5 Westbank First Nation is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to Westbank First Nation, within two (2) months from the date on which the damage was

sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:

- (a) there was reasonable excuse; and
- (b) Westbank First Nation has not been prejudiced in its defence by the failure or insufficiency.

BE IT KNOWN that this law entitled, "*WFN Freedom of Information and Protection of Privacy Law No. 2018*" is hereby:


Read a first time by Council of Westbank First Nation at a duly convened meeting held on the 23rd day of October, 2017;

Presented to the Membership at a Special Membership Meeting held on the 25th day of January, 2018;

Read a second time by Council of Westbank First Nation at a duly convened meeting held on the 26th day of February, 2018;

Read a third time and enacted by Council of Westbank First Nation at a duly convened meeting held on the 26th day of February, 2018;

Signed by the following Members of Council:



Chief Roxanne Lindley



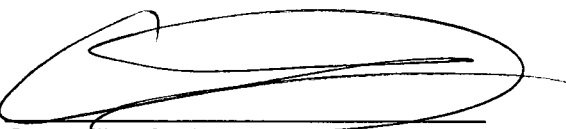
Councillor Thomas Konek



Councillor Brian Eli



Councillor Fernanda Alexander



Councillor Christopher Derickson