

Section 68 – Accepting Confidential Information from another Government

The purpose of this guidance is to outline the procedure for accepting information in confidence from another Government (including Government of Canada; foreign states, provincial/territorial, municipal or First Nation governments; organizations representing one or more governments; or international organization of states).

The Access to Information and Protection of Privacy (ATIPP) Act section 68, and the ATIPP Regulation section 18, establish the following requirements for accepting certain information provided by other government bodies as confidential and therefore subject to **mandatory non-disclosure** under ATIPP s.68.

Note: **this provision only applies to ATIPP requests for access to information:** information accepted in confidence will not be disclosed if found responsive to an access to information request.

The following is the process guidance to follow and is broken into detail by section:

1. What factors to consider before accepting in confidence
2. Identifying the specific information your department wants to accept in confidence.

For additional information please refer to the [ATIPP Act](#) s.68 and [ATIPP Regulation](#) s.18, as well as to the [ATIPP Interpretations Manual: Chapter 3](#).

What to consider before accepting in confidence

It is up to the head of the Public Body to accept the information in confidence. When determining whether to accept the information in confidence, the head must take into consideration the following:

1. Whether the information would be provided if it were not accepted in confidence, and
2. The reasons why access to the information should be prohibited.

NOTE: If not accepted in confidence via the process outlined below, the information in question may still be withheld from disclosure by the head under ATIPP s.76: *disclosure would be harmful to intergovernmental relations* (discretionary non-disclosure). In that situation, there is no statutory requirement for YG to notify the other government body of an access request for the information, but such a requirement for notice could be a term of contract between YG and the other government body.



How to accept in confidence

If the YG public body decides to accept the information in confidence, it must:

1. Identify the confidential information by making a physical or electronic notation in or on the information within the record in which it is contained, or in or on the record that contains the information, and;
2. provide the other government body with a written receipt (use ATIPPA s.68 Form, based on the regulation s.18(2)(b) for requirements), signed by the head or by the employee responsible for the program or activity that accepts the information in confidence on behalf of YG.

How to complete a receipt

1. Complete the fillable PDF receipt form found [insert hyperlink]. The receipt must be signed by the Head of the public body and must clearly identify the following:
 - a. The specific information being accepted in confidence;
 - b. The rationale for why the information is being accepted in confidence.
2. A copy of this receipt must be retained as long as the Public Body holds the information as information accepted in confidence and for one year afterwards; and the receipt must be stored with the record.

Access may be granted if these criteria apply:

1. The information has been in existence for 15 years or more
2. The government or organization from which the information was accepted:
 - a. Consents in writing to the disclosure of the information in question
 - b. Has made the information available to the public

Removal of s. 68, at the request of the other government body

Once in place, the other government body may make a request to the public body advising that it does not want ATIPPA s.68 to apply to this information on or after a specific date (for example, if the information will be made publicly available, etc.):

- The request must be made in writing to the Public Body
- Within 10 business days of the day on which the Public Body receives the request, the head must decide whether to grant or refuse the request;
- If the head's decision is to **refuse the request**, the Public Body must provide reasons for their decision to the applicant; and
- If the head's decision is to **grant the request**, the Public Body must invalidate this receipt as of the date specified in the request from the applicant, or as soon as practicable after that date and provide the applicant a receipt



Section 69 – Third party confidential business information

The purpose of this guidance is to outline the procedure for not granting an applicant access to information held by a responsive public body. This guidance will outline the criteria used to determine what will be kept confidential.

The Head of a public body must not grant access to an applicant if the following criteria apply

The head of a responsive Public Body, regarding an access request, must not grant an applicant access to information if the following applies:

1. The information is a trade secret of, or is the commercial, financial, scientific, or technical information of a third party that a public body has, in the prescribed manner, accepted in confidence from the third party, or;
2. Was collected by a public body:
 - a. From a third party's income tax return or,
 - b. For the purpose of determining tax liability of, or collecting a tax form of a third party

The Head of a public body may grant access to an applicant regarding third party information if the following applies

The following are the criteria in which the Head of a Public Body may grant access to third-party information:

1. The third-party consents in writing to the disclosure of the information requested
2. The third party has made the information available to the public
3. The information is publicly available information

