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Access to Information and Privacy

GUIDELINES FOR THE INFORMAL RELEASE OF INFORMATION

**Access to Information and Privacy Secretariat**

**2015**



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### Purpose

The purpose of these guidelines is to facilitate the dissemination of information held by Fisheries and Oceans Canada (DFO). These guidelines outline the factors that must be considered before deciding to either release information informally or direct requesters of information to the Access to Information and Privacy (ATIP) Secretariat.

### Target Audience

These guidelines apply to all employees of DFO, including the Canadian Coast Guard (CCG).

### Related Legislation and Policies

These guidelines are issued pursuant to, and should be read in conjunction with, the following:

* [Access to Information Act](http://laws-lois.justice.gc.ca/eng/acts/a-1/)
* [Access to Information Regulations](http://laws-lois.justice.gc.ca/eng/regulations/SOR-83-507/)
* [Privacy Act](http://laws-lois.justice.gc.ca/eng/acts/p-21/page-3.html)
* [Privacy Regulations](http://laws-lois.justice.gc.ca/eng/regulations/sor-83-508/index.html)

Treasury Board Secretariat:

* [Policy on Access to Information](http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12453)
* [Policy on Privacy Protection](http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12510&section=text)
* [Policy Framework for Information and Technology](http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12452&section=text)
* [Policy on Information Management](http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?section=text&id=12742)
* [Policy on Government Security](http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?section=text&id=16578)
* [Communications Policy of the Government of Canada](http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12316&section=HTML)

Fisheries and Oceans Canada:

* [DFO Privacy Policy](https://intra.ent.dfo-mpo.ca/policies/privacy-e)
* [DFO Directive on Privacy Practices](https://intra.ent.dfo-mpo.ca/policies/privacy-e)
* [DFO Standard on Privacy Breaches](https://intra.ent.dfo-mpo.ca/policies/privacy-e)

### Definitions

See the [Glossary of Terms](http://intra.ent.dfo-mpo.ca/Training/glossary-e) on the ATIP Secretariat’s intranet page.

### Enquiries

Please direct enquiries about these guidelines to the ATIP Secretariat at

[DFOprivacy-viepriveeMPO@dfo-mpo.gc.ca](mailto:DFOprivacy-viepriveeMPO@dfo-mpo.gc.ca)*.*

### Introduction

Informal release of information is consistent with Canada’s Action Plan on [Open Information](http://data.gc.ca/eng/canadas-action-plan-open-government#toc6) which emphasizes proactively releasing information to Canadians on an ongoing basis. The *Access to Information Act* (ATIA) andTreasury Board Secretariat policies on communications, access to information and information management reaffirm that informal channels should be the primary vehicle used to release government information to the general public. Informal release of information is a more efficient use of departmental resources; it can reduce the number of formal ATIA requests, thereby reducing workload to the department.

### Context

Informal releases of information refer to those made by DFO employees outside of the ATIP Secretariat. They include releases to employees in other sectors of the department or to external parties, including members of the public, private sector organizations, other federal institutions and/or other levels of government.

Common scenarios in which these guidelines would apply are:

* When a DFO employee receives a request for information directly from an external party[[1]](#footnote-1) or from another sector of the department and must determine what response is appropriate; and
* When there is a high demand for specific information that could be released proactively.

These guidelines apply to any DFO employee who has been authorized by management to release information informally, provided these guidelines are followed and all criteria in favour of informal release are satisfied. Although there are many benefits of sharing information informally, it is important to remember that there are risks if not responsibly managed. Information under the control of DFO is considered to be a Government of Canada asset and must be managed accordingly.

### Sharing of Information within DFO

These guidelines may be used to enable sharing of information between sectors and regions within DFO. Considerations when sharing information within the department include:

* Do the records contain personal information? If so, does the intended recipient of the information have a valid need to know the personal information? I.e., can the recipient pass the *Need to Know Test[[2]](#footnote-2)*? Nice to know does not equal need to know. Also, seniority does not automatically confer a valid need to know. Standard Personal Information Bank (PIB) and DFO PIBdescriptions include all consistent uses of personal information at DFO. Before sharing the information, ensure that it is appropriately reflected in a PIB or you may be breaching someone’s privacy.
* Are the documents appropriately labelled with security designations?
* Do the potential recipients of the information have the necessary security clearance to view the information?
* Do the potential recipients of the information know if the information is subject to an information sharing agreement, memorandum of understanding or a legal proceeding?
* Do the potential recipients of the information need to be advised to restrict further dissemination?
* Is there any other issue that might not be obvious from the record itself, but would impact the need for restricted access and heightened security?

### Informal Release of Information Steps

1. [Identify the subject matter expert](#_1_–_Identify)
2. [Identify the records containing the information sought](#_2_–_Identify)
3. [Determine if the records contain personal information](#_3_–_Determine)
4. [Determine if the records contain third party information](#_Determine_if_the)
5. [Determine if the information is already publicly available](#_4_–_Determine)
6. [Assess the records for the following types of information](#_5_–_Assess)
7. [Consider data format options](#_6_–_Consider)
8. [Seek approval prior to informal release](#_7_–_Seek)
9. [Keep a record of informal release](#_Keep_a_record)

**If, at any point through the following steps, there is doubt about the appropriateness   
of releasing information informally, contact the ATIP Secretariat.**

#### Identify the subject matter expert

When an external party or another sector of the department requests information directly from a DFO employee:

* Determine who in the department (office, sector, region) created the information or is responsible for the information; and
* If you are not the subject matter expert (SME) or part of the Office of Primary Interest (OPI), forward the request to the appropriate individual for a response. There is no need to forward or copy the informal request to the ATIP Secretariat at this step.

Whenever possible, information should be released informally directly from the originator of that information in keeping with these guidelines.

#### Identify the records containing the information sought

The SME (or originator of the information) should:

* Clarify what information is being requested;
* Identify what records exist to satisfy the request; and
* Consider the following: If the information is not readily found in existing departmental records, can it be compiled from electronic systems/databases?

#### Determine if the records contain personal information

The [Privacy Act](http://laws-lois.justice.gc.ca/eng/acts/p-21/) defines personal information as “information about an identifiable individual that is recorded in any form.” A definition of what is and what is not considered personal information can be found in [Appendix A](#A). If you have questions regarding the interpretation of this definition, contact the ATIP Secretariat.

#### When personal information is requested by a member of the public…

The definition of personal information and the rules governing its management are complex. Even releasing aggregated personal information can be problematic with the advent of computer assisted data matching. Therefore:

**Do not release records containing personal information. Contact the ATIP Secretariat.**

**In some cases*,*** it is possible to de-personalize information through aggregation. If choosing to de-personalize information, the SME should:

* Aggregate to the rule of five[[3]](#footnote-3). This means there should be at least five people or personally identifying variables aggregated in the data set. With data sets smaller than five, the likelihood of disclosing information about identifiable individuals increases;
* Ensure that the information to be provided cannot be combined with another source (i.e., data matching) to reveal personal information;
* Seek guidance from the ATIP Secretariat on de-personalization through data aggregation, if necessary; and
* Continue to assess the records for the possibility of informal release.

#### When personal information is requested by a DFO employee…

Managers have the authority to provide employees with their own personal information and are encouraged to provide employees with this type of information informally. [Standard PIBs](http://www.infosource.gc.ca/emp/emp03-eng.asp) outline what constitutes acceptable use, sharing, and retention of personal information belonging to employees.

Before directing employees to submit a formal request for information under the *Privacy Act*, managers should:

* Determine if the information can be disclosed for normal operational reasons. I.e., is disclosure consistent with the purpose and consistent uses described in the [Standard PIBs](http://www.infosource.gc.ca/emp/emp03-eng.asp)? If uncertain, managers should contact the ATIP Secretariat. This does not limit employees’ rights to seek their personal information through the *Privacy Act*.
* Refer to 3(j) in [Appendix A](#A) to understand what is *not* considered employee personal information.
* Consult Human Resources (Labour Relations), who will engage ATIP as required, before releasing records containing allegations of wrongdoing to an employee (such as written allegations related to administrative investigations). Employee personal information is often intertwined with others’ personal information and the disclosure might result in a privacy breach if proper procedures are not followed.

#### Determine if the records contain third party information

Check to see if the records or information originate from third parties. DFO must protect information that has been provided by third parties in confidence, particularly when the records contain financial, commercial, scientific or technical information. DFO must protect third party information when its disclosure could reasonably be expected to injure the third party. In this context, third parties are any person, group of persons or organization other than a government institution from which DFO collects information.

**Do not release records containing information that was provided to DFO by third parties in confidence, nor information the disclosure of which may injure a third party.   
Contact the ATIP Secretariat.**

As with personal information,**in some cases**it is possible to render third party information anonymous through aggregation. If choosing to de-identify third party information, the SME should:

* Ensure there are at least five[[4]](#footnote-4) groups/organizations in the data set;
* Ensure that the information provided cannot be combined with another source (i.e., data matching) to reveal confidential or injurious third party information;
* Seek ATIP guidance, if necessary, and
* Continue to assess the records for the possibility of informal release.

#### Determine if the information is already publicly available

Publicly available information includes information that is available on websites, through Open Data portals, or on display in government offices, reception areas or reading rooms. It includes information that has been distributed in consultation processes, sent to the public in mass mailings or promotional campaigns, or has already been reported on by media. The SME should:

* Check public sources to determine whether the information is already available. Information that is substantively similar to information already in the public domain can be released informally, provided that you do not have knowledge on the issue that would suggest the release of the information would result in injury to a process, a negotiation, government or a third party. If in doubt, continue to assess the information for informal release.
* Check terms of contracts, terms of reference for committees, and privacy statements on forms. In certain circumstances, it is stated on these documents that the information will or will not (or can or cannot) be made public on request.

Publicly available information can, and usually should, be released informally. Ideally, refer the requester to the public source. The exception would be when information was made public in error.

#### Assess the records for the following types of information

The following is a non-exhaustive list of the types of information, in addition to personal and third party information, which may require protection.

| **Contact the ATIP Secretariat if the requested records contain the following:** | |
| --- | --- |
| INFORMATION FROM OTHER GOVERNMENTS OR ORGANIZATIONS | * Correspondence from Aboriginal, municipal, regional, provincial and foreign governments. * Reports produced by an international organization of states, etc. |
| INFORMATION PROTECTED BY SOLICITOR-CLIENT PRIVILEGE | * E-mails, letters, reports, etc. between DFO and lawyers for the purpose of obtaining or providing legal advice. * Records created (or obtained specially) by lawyers for litigation, whether existing or contemplated. |
| INFORMATION REVEALING CABINET CONFIDENCES | * Information revealing confidences of the Queen’s Privy Council, cabinet decisions or the decision-making process, such as: Memoranda to Cabinet; Treasury Board submissions; draft legislation; Orders in Council; correspondence between Ministers, etc. * Attachments and references to the contents of the above-noted documents. |
| INFORMATION INJURIOUS TO GOVERNMENT OPERATIONS | * Advice or recommendations, accounts of consultations, deliberations, positions or options that: * Are yet to be implemented; * Would undermine DFO’s ability to proceed with a program or activity; * Would create a ‘chilling effect’ on the provision of candid advice. * Plans relating to the management of personnel or the administration of the department that have not been put into operation. |
| INFORMATION INJURIOUS TO LAW ENFORCEMENT | * Information injurious to the enforcement of any law of Canada or province, such as: * A Conservation and Protection officer’s log book containing information about an individual under investigation by the RCMP. * A report detailing an ongoing C&P investigation. * E-mail referencing the investigation techniques currently employed by the Canada Revenue Agency. |
| INFORMATION INJURIOUS TO FEDERAL-PROVINCIAL AFFAIRS | * Information injurious to imminent or ongoing negotiations, deliberations, consultations between the federal and provincial governments, such as: * An email containing disparaging comments about provincial counterparts. * A report outlining DFO’s bargaining position in an ongoing negotiation. |
| INFORMATION INJURIOUS TO INTERNATIONAL AFFAIRS OR DEFENCE | * Information in records that would injure Canada’s reputation with other nations, such as: * A report identifying the location of strategic national defence installations. * A briefing note on a contentious international issue. |
| Information relating to testing or auditing procedures or techniques | * Information about a specific audit or test that is underway, the disclosure of which would undermine the audit or test. * Testing or auditing procedures, questionnaires or techniques that are intended to be reused and must be kept confidential to maintain effectiveness, etc. |
| INFORMATION TO BE PUBLISHED | * Scientific reports, or research data, where the department wants to maintain priority of publishing. (Program areas can use their discretion on whether or not to release information slated to be published. However, if a report is subject to a formal ATIA request, it should be published within 90 days in order to protect it under s.26 of the ATIA.) * Public report not yet submitted to Parliament, etc. |

#### Factors against informal release

* The records contain any of the information types found in the table above.
* The records contain information considered protected or classified.
* The information was provided in confidence.
* The information could be misleading or inaccurate unless a caveat can be included to explain the issue/inaccuracy.
* No comprehensive confidentiality or privacy assessment has been conducted on the data set.

#### Factors favouring informal release

* The information is normally available to external parties. For specific catch, effort and quota data elements that can and cannot be released informally, see [Appendix](#C) B.
* The information is factual and statistical.
* The information is clear and properly contextualized.
* The information is subject to a valid information sharing agreement and the contemplated release adheres to all rules governing that agreement.

**If there is any doubt about the appropriateness of releasing information informally, contact the ATIP Secretariat.**

#### Consider data format options

For requests for data, once it has been determined the information is releasable, the SME should:

* Determine in what format to release the data, balancing operational constraints with recipient preferences. For example, if the intention is to provide data that would be difficult to manipulate, emailing a PDF of a scanned document or mailing a hard copy instead of an electronic file might be preferred.
* Read the Government of Canada’s [Open Data 101](http://open.canada.ca/en/open-data-principles).

#### Seek approval prior to informal release

Ensure the Directors of programs or activities to which information relates, Communications and other interested parties are aware and approve the informal release of information. The approval process can be a simple email confirmation from the appropriate officials that they approve or acknowledge the release.

#### Keep a record of informal release

Keep a record of informal releases, including the date and the contents of what was released.

This will assist the department should follow-up questions arise. It will also facilitate future decision-making, as records that have already been released generally cannot be protected by ATIP. Documenting informal releases also improves efficiency and consistency, as similar requests can receive standard responses.

Directorates are encouraged to designate specific employees as information management contacts.

Note that the ATIP Secretariat may request copies of tracking documentation periodically, as a means of assessing the implementation of these guidelines.

See Appendix C for Questions and Answers.

### Appendix A – Definition of Personal Information

Pursuant to [section 3 of the Privacy Act](http://laws-lois.justice.gc.ca/eng/acts/p-21/page-1.html#h-3), “personal information” means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,

1. information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual,
2. information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
3. any identifying number, symbol or other particular assigned to the individual,
4. the address, fingerprints or blood type of the individual,
5. the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,
6. correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,
7. the views or opinions of another individual about the individual,
8. the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and
9. the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual,

**but,** for the purposes of sections 7, 8 and 26 and section 19 of the *Access to Information Act*, does not include

1. information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,

(i) the fact that the individual is or was an officer or employee of the government institution,

(ii) the title, business address and telephone number of the individual,

(iii) the classification, salary range and responsibilities of the position held by the individual,

(iv) the name of the individual on a document prepared by the individual in the course of employment, and

(v) the personal opinions or views of the individual given in the course of employment,

1. information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,
2. information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and
3. information about an individual who has been dead for more than twenty years.

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### Appendix B – Catch and Effort and Quota Information: Do’s and Don’ts for Informal Release

| **Catch and Effort and Quota Rules of Disclosure** | |
| --- | --- |
| **Data elements that can be released informally to external parties because they relates to a discretionary benefit of a financial nature (subsection 3(l) of the *Privacy Act*):** | **Data elements and records that cannot be released informally to external parties (including dockside monitoring companies) when attributable to an identifiable licence holder[[5]](#footnote-5):** |
| 1. Licence number 2. Name of licence holder 3. Area(s) they are allowed to fish 4. Species they are allowed to fish 5. Quota they are allowed to catch (only the original quota, not the remaining quota) 6. Conditions of licence 7. Vessel name as it appears on the licence 8. Total allowable catch (TAC) | 1. Address of licence holder 2. Telephone number or email address of licence holder 3. Fisher Identification Number (FIN) of licence holder 4. Outstanding fees associated with either the licence, quota or status of fish harvester account 5. Actual catch[[6]](#footnote-6) landed (volume or value) on an individual licence 6. Community or homeport of licence holder 7. Actual licence document of licence holder 8. Status of licence (e.g., suspended, frozen, expired, cancelled) 9. Longitude and latitude coordinates of a vessel related to fishing routes and strategy 10. Names of vessel captains, crew, seafood buyers, etc. when these individuals are not receiving a discretionary benefit of a financial nature from DFO |

**If there is any doubt about the appropriateness of releasing information informally, contact the ATIP Secretariat at** [**DFOprivacy-vieprivéeMPO@dfo-mpo.gc.ca**](mailto:DFOprivacy-vieprivéeMPO@dfo-mpo.gc.ca)

### Appendix C – Questions and Answers from the Consultation Process

**Do these steps apply even when information release is consistent with the purpose and uses described in the Personal Information Banks?**

The steps for informal release do not apply to personal information, unless it has been de-personalized. Release of personal information is, as noted, governed by the relevant PIBs and the *Privacy Act*.

**Does ‘keeping a record’ apply to data requests collected by DFO on DFO employees from a PIB?**

Personal information is not governed by these guidelines, unless de-personalized. The ATIP Secretariat must keep a record of all *formal* requests for access to personal information. Informal personal information data requests by employees should occur directly between employees and managers or HR or Finance, etc., depending on what the employee is looking for. These areas would be responsible for their own procedures and determining if a record of access must be kept.

**If you forward the request at step 1 – identifying the subject matter expert – is there a process for notifying the ATIP Secretariat?**

It is not necessary to notify ATIP at this step.

**Who will provide the program with advice on whether information has been rendered anonymous?**

Contact the ATIP Secretariat at [DFOprivacy-viepriveeMPO@dfo-mpo.gc.ca](mailto:DFOprivacy-viepriveeMPO@dfo-mpo.gc.ca).

**How is “authorized by management” determined?**

In this context, it refers to a Director (usually) authorizing staff to release information informally, as per step 8.

**What is the final level of sign-off for informal release?**

The ATIP Secretariat recommends sign-off at the Director level as a minimum.

**Does step 8 (seek approval) apply to both internal and external requests?**

Yes, it is a recommended to seek approval and document the flow of information within DFO as well. There might be exceptions; common sense would prevail.

**How do these guidelines help clarify what information can be released related to Aboriginal Traditional Knowledge (ATK), which is information they want DFO to use but not disclose?**

All records under DFO control are subject to the *Access to Information Act*. Confidentiality undertakings, while important, do not constitute on their own a sufficient reason under the Act to protect ATK. Criteria for withholding ATK as ‘confidential’ information includes: the information constitutes financial, commercial, scientific or technical information; it was supplied to DFO in confidence; and the party has consistently treated the information in a confidential manner.

**In Appendix B (data elements that can be released), does “species they are allowed to fish” mean the species under the specified licence or all the licences held by the individual?**

Any species that a licence holder is authorized to retain based on the conditions of the licence are considered a “discretionary benefit of a financial nature” and are releasable.

1. An external party is any person, group of persons or organization external to DFO. External parties include other federal departments and industry stakeholders. [↑](#footnote-ref-1)
2. Need to Know Test: Can the intended recipient of the personal information effectively meet his/her operational objectives without the use of the personal information? If yes, there is no valid need to know and the information should not be shared. [↑](#footnote-ref-2)
3. The ATIP Secretariat recommends using a minimum of five when aggregating personal information. This is to ensure that information such as home address cannot be attributable to identifiable individuals. Other standards may be used, provided a risk assessment has been conducted to verify that personally identifiable information is not disclosed. Contact ATIP when in doubt. [↑](#footnote-ref-3)
4. The ATIP Secretariat recommends using a minimum of five when aggregating third party information. Other standards may be used, provided a risk assessment has been conducted to verify that information about third parties is not inappropriately disclosed. Contact ATIP when in doubt. [↑](#footnote-ref-4)
5. The ATIP Secretariat recommends using a minimum of five when aggregating protected information. Other standards may be used, provided a risk assessment has been conducted to verify that protected information is not disclosed. Before aggregating protected information for disclosure purposes, ensure a proper understanding of the principles of aggregation by contacting the ATIP Secretariat. [↑](#footnote-ref-5)
6. With landed catch, aggregation to a minimum of three may be acceptable provided total landings sufficiently obscure individual landings to balance privacy, confidentiality and sustainability reporting requirements. [↑](#footnote-ref-6)