

## Providing Reasons for Refusal of Access

Public body refusals of access to information requests must inform applicants of the exemptions relied upon. Section 17(1)(c)(i) states:

*17. (1) In a final response to a request for access to a record, the head of a public body shall inform the applicant in writing [...]*

*(c) if access to the record or part of the record is refused,*

*(i) the reasons for the refusal and the provision of this Act on which the refusal is based, [...]*

A public body is not required to disclose the contents of the records being withheld, but must provide the applicant with more than a recitation of the section being relied upon. The public body should indicate why the specific exception applies to the withheld information, which element(s) of the exception are relevant and explain, with reasonable detail, why those elements apply to the requested information.

For example, section 29(1)(a) states: “The head of a public body may refuse to disclose to an applicant information that would reveal advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister”. A reason for the refusal of access in accordance with this section should include:

- i) an explanation of which specific type of information listed in 29(1)(a) the withheld information falls within (i.e. does the record contain advice? A proposal? Recommendations?)
- ii) an explanation of why withholding the requested information will protect the open and frank discussion of policy issues within the public service, preventing the harm which would occur if the deliberative process were subject to excessive scrutiny; and
- iii) direct reference to the wording of section 29.

For further guidance on what is required to apply a specific exception, please see the Access to Information and Protection of Privacy Office’s [Access to Information Policy and Procedures Manual](#).

The requirement to provide reasons also extends to section 40 (disclosure harmful to personal privacy) of the *ATIPPA, 2015*. It is not sufficient for a public body simply to state that the information is an unreasonable invasion of a third party’s personal privacy. A public body must provide the applicant with adequate information to understand why the disclosure would be an unreasonable invasion of a third party’s privacy. However, a public body must also be cautious not to provide so much detail in its explanation so as to reveal the identity of the third party<sup>1</sup> or any information that is required to be withheld. Reasons should also include a discussion of the public body’s consideration of the factors outlined in subsection 40(5).



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<sup>1</sup> Unless the access to information request sought records relating to a named third party.

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From an applicant's point of view, the reasons why a request was refused is an essential part of the response. If applicants can clearly understand why access is refused, they may accept the public body's response. Ambiguity as to the reasons for refusing a request leads to a greater likelihood of complaints about the decision to refuse access. Even if a complaint is made, a thorough explanation of the reasons for the refusal can help define and focus the issues for investigation and facilitate an informal resolution.

