

**SAWRIDGE FIRST NATION**

***AN ACT RESPECTING  
ACCESS TO INFORMATION***

**Introduced at a General Assembly Held September 10, 2016**

**First Reading – September 10, 2016**

**Second Reading – December 3, 2016**

**Third Reading – January 21, 2017**

**Came in to Force – March 22, 2017**

## *An Act Respecting Access to Information*

### *Short Title*

1. This Act may be cited as the "*Sawridge Access to Information Act*".

### *Purpose*

2. The purposes of this Act are
  - (a) to assist Members of the Sawridge First Nation to hold their government accountable to them;
  - (b) to specify limited exceptions to the rights of access;
  - (c) to provide for an independent review of decisions made under this Act.

### *Interpretation*

3. In this Act,

"applicant" means a Member who applies pursuant to this Act for access to a record;

"Commissioner" means the Access to Information Commissioner appointed under this Act;

"employee", in relation to the Sawridge Government or an agency, body or other unit which is responsible to the Sawridge Government, is a person employed or retained under contract to perform services for the Sawridge body;

"head" means the person designated in the regulations as the head of the agency, body, or other unit which is responsible to the Sawridge Government;

"law enforcement" includes

- (a) policing, including criminal intelligence operations,
- (b) investigations that lead or could lead to the imposition of a penalty or sanction, or
- (c) proceedings that lead or could lead to the imposition of a penalty or sanction.

"member" means a natural person whose name is on the Sawridge Membership List;

"offence" means an offence under an enactment of the Sawridge Government;

"personal information" means information about an identifiable individual, including

- (a) the individual's name, home or business address or home or business telephone number;
- (b) the individual's race, colour, national or ethnic origin or religious or political beliefs or associations;
- (c) the individual's age, sex, sexual orientation, marital status or family status,
- (d) an identifying number, symbol or other particular assigned to the individual,
- (e) the individual's fingerprints, blood type or inheritable characteristics,
- (f) information about the individual's health and health care history, including information about a physical or mental disability,
- (g) information about the individual's educational, financial, criminal or employment history,
- (h) anyone else's opinions about the individual,
- (i) the individual's personal opinions, except where they are about someone else;

"record" means a record of information in any form and includes information that is written, photographed, recorded or stored in any manner, but does not include a computer program or other mechanism that produces records;

"responsible member of Council" means the member of the Sawridge Council who has been formally designated as being responsible for the administration of this Act, and if there is no current designation, the Chief of the Sawridge First Nation;

"Sawridge body" means any department, branch or office of the Sawridge First Nation including the First Nation's Principal Office, and Consultation Office and such other bodies under the control of the First Nation as may be designated by regulation, but does not include the Sawridge Assembly or any committee, or office of the Sawridge Assembly;

"third party" means a person other than an applicant or a Sawridge body;

"trade secret" means information, including a formula, pattern, compilation, program, device, product, method, technique or process

- (a) that is used or may be used, in business or for any commercial advantage,
- (b) that derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use,
- (c) that is the subject of reasonable efforts to prevent it from becoming generally known, and
- (d) the disclosure of which would result in harm or improper benefit.

*Scope of the Act*

4. (1) This Act applies to all records in the custody or under the control of a Sawridge body, including court administration records, but does not apply to the following:
- (a) a record in a court file, a record of a judge of a court of competent jurisdiction
  - (b) a personal note, communication or draft decision of a person who is acting in a judicial or quasi-judicial capacity;
  - (c) a record relating to a prosecution where all proceedings in respect of the prosecution have not been completed;
  - (d) a question that is to be used on an examination or test;
  - (e) material placed in the Sawridge Archives by or for a person other than a Sawridge body; and
  - (f) a record in a registry operated by a Sawridge body where public access to the registry is normally permitted;

*Other access rights protected*

- (2) This Act
- (a) is in addition to and does not replace other procedures for access to government information or records;
  - (b) does not in any way limit access to government information or records normally available to the public;

- (c) does not limit the information otherwise available by law to a party to legal proceedings;
- (d) does not affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents; and
- (e) does not prohibit the transfer, storage or destruction of any record in accordance with another Act or a regulation under another Act.

*Government is bound by Act*

- (3) The Sawridge Government is bound by this Act.

*Conflict with other enactment*

- (4) If a provision of this Act is inconsistent with or in conflict with a provision of any other enactment, the provision of this Act prevails unless the other enactment is an Act, or is made under an Act, that expressly provides that the Act, a provision of the Act or a regulation or order made under the Act prevails despite this Act.

*Privacy Act*

- (5) Notwithstanding the foregoing, if any provision of this Act is inconsistent with or in conflict with a provision of the *Privacy Act*, then the provision of the *Privacy Act* shall prevail.

## PART I

### OBTAINING ACCESS TO RECORDS

*Right of access*

- 5. (1) A Member who makes a request under section 6 has a right of access to any record in the custody or under the control of a Sawridge body, including a record containing personal information about the applicant, except for information exempted from disclosure.

*Information excepted from disclosure*

- (2) The right of access to a record does not extend to information excepted from disclosure under Part II, but where that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

*Fees*

- (3) The right of access to a record is subject to the payment of any applicable fee.

*How to make an access request*

6. (1) To obtain access to a record, a Member must make a written request to the Sawridge body that the Member believes has custody or control of the record.

*Request to be detailed*

- (2) The request must provide enough detail to enable the Sawridge body to identify the record.

*Request for copy of record*

- (3) The applicant may ask for a copy of the record or ask to examine the record.

*Duty to assist applicants*

7. (1) The head of a Sawridge body shall make every reasonable effort to assist an applicant and to respond to an applicant openly, accurately, completely and without delay.

*Duty to create document*

- (2) The head of a Sawridge body shall create a record for an applicant where
- (a) the record can be created from a machine readable record in the custody or under the control of the Sawridge body using its normal computer hardware and software and technical expertise; and
  - (b) creating the record would not unreasonably interfere with the operations of the Sawridge body.

*Language of access*

- (3) The head of a Sawridge body shall give access to a record in the language used in the record.

*Time limit for responding*

8. (1) The head of a Sawridge body shall respond to an applicant not later than 30 days after a request is received unless
- (a) the time limit is extended pursuant to this Act, or
  - (b) the request has been transferred under section 12 to another Sawridge body.

*Effect of failure to respond*

- (2) The failure of a head to respond to a request in time is to be treated as a decision to refuse access to the record.

*Contents of response*

9. (1) Subject to subsection (2), the applicant must be told, in a response under subsection 7(1),
- (a) whether or not the applicant is entitled to access to the record or to part of the record under this Act;
  - (b) if the applicant is entitled to access, where, when and how access will be given, and
  - (c) if access to the record or to part of the record is refused,
    - (i) the reasons for the refusal and the provision of this Act on which the refusal is based;
    - (ii) the name, title, office address and office telephone number of an officer or employee of the Sawridge body who can answer the applicant's questions about the refusal, and
    - (iii) that the applicant may ask for a review of the refusal under provisions of this Act.

*Exception*

- (2) The head of a Sawridge body may refuse to confirm or deny the existence of a record
- (a) containing information described in section 13 through 27, or
  - (b) containing personal information respecting a third party, where disclosure of the information would be an unreasonable invasion of the third party's personal privacy.

*How access will be given*

10. (1) Where an applicant is told pursuant to this Act that access to a record will be given, the head of the Sawridge body concerned must comply with this section.

*Copy of record to be provided with response*

- (2) Where an applicant has asked for a copy of a record, the copy must be provided with the response or the applicant must be given reasons for the delay in providing the copy if
- (a) the record, or the part of it to which access will be given, can be reasonably reproduced by the Sawridge body using its normal equipment and expertise, and

- (b) creating the copy would not unreasonably interfere with the operations of the Sawridge body.

*Examination of record*

- (3) Where an applicant has asked to examine a record or when a copy is not being provided under subsection (2), the applicant must
  - (a) be permitted to examine the record or part of the record, or
  - (b) otherwise be given access in accordance with the regulations.

*Information about applicant's health*

- (4) Despite subsections (2) and (3), access to personal information relating to an applicant's physical or mental health may be given only in a manner authorized by the regulations.

*Extension of time limit for responding*

- 11. (1) The head of a Sawridge body may extend the time for responding to a request for a reasonable period where
  - (a) the applicant does not give enough detail to enable the Sawridge body to identify a requested record;
  - (b) a large number of records is requested or must be searched to identify the requested record and meeting the time limit would unreasonably interfere with the operations of the Sawridge body;
  - (c) more time is needed to consult with a third party or another Sawridge body before the head can decide whether or not the applicant is entitled under this Act to access a requested record;
  - (d) a third party asks for a review under subsection 30(2).

*Notifying applicant of extension*

- (2) Where the time for responding to a request is extended under subsection (1), the head of the Sawridge body must tell the applicant without delay
  - (a) the reason for the extension;
  - (b) when a response can be expected; and
  - (c) that the applicant may ask for a review of the extension pursuant to this Act.



*Transferring request to another Sawridge body*

12. (1) The head of a Sawridge body may transfer a request for access to a record and, if necessary, the record, to another Sawridge body where
- (a) the record was produced by or for the other Sawridge body;
  - (b) the other Sawridge body was the first to obtain the record; or
  - (c) the record is in the custody or under the control of the other Sawridge body.

*Notifying applicant of transfer*

- (2) Where a request is transferred to another Sawridge body,
- (a) the head of the Sawridge body who transferred the request shall notify the applicant of the transfer without delay; and
  - (b) the head of the Sawridge body to which the request is transferred shall respond to the applicant in accordance not later than 30 days after the request is received by that Sawridge body unless this time limit is extended, all pursuant to this Act.

*Abandoned request*

- 12.1. (1) The head of a Sawridge body may, by notice to the applicant, declare a request abandoned where
- (a) the head of the Sawridge body has given notice to an applicant seeking further information from the applicant that is necessary to process the request or requesting the applicant to pay an applicable fee; and
  - (b) the applicant has failed to respond to the Sawridge body or pay the applicable fee within 90 days after being contacted.

*Content of notice*

- (2) A notice declaring a request abandoned must state that the applicant may ask for review of that decision by the Access to Information Commissioner.

## PART II

### EXCEPTIONS TO DISCLOSURE

*Council confidences*

13. (1) The head of a Sawridge body shall refuse to disclose to an applicant information that would reveal a confidence of the Council, including consultations among

members of the Council or Financial Management Board on matters that relate to the making of government decisions or the formulation of government policy; however,

*Fifty year limit*

- (2) This section does not apply to information that has been in existence in a record for more than fifty years.

*Disclosure of advice from officials*

14. (1) The head of a Sawridge body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to reveal
- (a) advice, proposals, recommendations, analyses or policy options developed by or for a member of the Council or the Council;
  - (b) consultations or deliberations involving
    - (i) officers or employees of a Sawridge body,
    - (ii) a member of the Council, or
    - (iii) the staff of a member of the Council;
  - (c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Sawridge Government or a Sawridge body, or considerations that relate to those negotiations;
  - (d) plans that relate to the management of personnel or the administration of a Sawridge body that have not yet been implemented;
  - (e) the contents of draft legislation, regulations and orders;
  - (f) information, including the proposed plans, policies or projects of a Sawridge body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

*Exceptions*

- (2) Subsection (1) does not apply to information that
- (a) has been in existence in a record for more than fifty years;
  - (b) is a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function;

- (c) is the result of product or environmental testing carried out by or for a Sawridge body, unless the testing was done
  - (i) for a fee as a service to a person other than a Sawridge body, or
  - (ii) for the purpose of developing methods of testing or testing products for possible purchase;
- (d) is a statistical survey;
- (e) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal;
- (f) is an instruction or guideline issued to officers or employees of a Sawridge body; or
- (g) is a substantive rule or statement of policy that has been adopted by a Sawridge body for the purpose of interpreting an enactment or administering a program or activity of the Sawridge body.

*Privileged information*

15. The head of a Sawridge body may refuse to disclose to an applicant

- (a) information that is subject to any type of privilege available at law, including solicitor-client privilege;
- (b) information prepared by or for an agent or lawyer of a member of Council or a Sawridge body in relation to a matter involving the provision of legal services, or
- (c) information in correspondence between an agent or lawyer of a member of Council or a Sawridge body and any other person in relation to a matter involving the provision of advice or other services by the agent or lawyer.

*Disclosure prejudicial to intergovernmental relations*

16. (1) The head of a Sawridge body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to

- (a) impair relations between the Sawridge Government and any of the following or their agencies:
  - (i) the Government of Canada or a province or territory,
  - (ii) an indigenous entity exercising governmental functions, including, but not limited to an organization established to negotiate or

implement, on behalf of indigenous people, a treaty or land claim agreement or treaty with the Government of Canada,

- (iii) a municipal or settlement council or other local authority,
- (iv) the government of a foreign state,
- (v) an international organization of states;
- (vi) a First Nation or band Council or other governmental authority of a First Nation or Band;
- (vii) a tribal council or similar body which provides services to the Sawridge First Nation;

(b) prejudice the conduct of negotiations relating to Treaty or claims;

(c) reveal information received, explicitly or implicitly, in confidence from a government, local authority or organization referred to in paragraph (a) or its agency.

*Approval of Chief and Council*

(2) The head of a Sawridge body shall not disclose information referred to in paragraphs (1)(a) and (b) without the approval of the Chief and Council.

*Approval of Chief and Council and consent of other government*

(3) The head of a Sawridge body shall not disclose information referred to in paragraph (1)(c) without the approval of the Chief and Council and the written consent of the government, local authority, organization or agency that provided the information.

*Fifty-year limit*

(4) This section does not apply to information that has been in existence in a record for more than 50 years unless the information relates to law enforcement.

*Economic and other interests of Sawridge bodies*

17. (1) The head of a Sawridge body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the economic interest of the Sawridge Government or a Sawridge body or the ability of the Government to manage the economy, including the following:

- (a) trade secrets of the Sawridge Government or a Sawridge body;

- (b) financial, commercial, scientific, technical or other information in which the Sawridge Government or a Sawridge body has a proprietary interest or a right of use and that has, or is reasonably likely to have, monetary value;
- (c) information the disclosure of which could reasonably be expected to
  - (i) result in financial loss,
  - (ii) prejudice the competitive position of, or
  - (iii) interfere with contractual or other negotiations of the Sawridge Government or a Sawridge body; and
- (d) scientific or technical information obtained through research by an employee of a Sawridge body, the disclosure of which could reasonably be expected to deprive the employee or Sawridge body of priority of publication.

*Product and environmental testing*

- (2) A head shall not refuse, under subsection (1), to disclose the results of product or environmental testing carried out by or for a Sawridge body, unless the testing was done
  - (a) for a fee as a service to a person other than a Sawridge body; or
  - (b) for the purpose of developing methods of testing or testing products for possible purchase.

*Testing procedures, tests and audits*

- 18. The head of a Sawridge body may refuse to disclose to an applicant information relating to
  - (a) testing or auditing procedures or techniques, or
  - (b) details of specific tests to be given or audits to be conducted, where disclosure could reasonably be expected to prejudice the use or results of particular tests or audits.

*Disclosure harmful to the conservation of heritage sites*

- 19. The head of a Sawridge body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to result in damage to or interfere with the conservation of
  - (a) fossil sites or natural sites;

- (b) sites having an anthropological or heritage value or indigenous cultural significance, or
- (c) any rare, endangered, threatened or vulnerable form of life.

*Disclosure prejudicial to law enforcement*

20. (1) The head of a Sawridge body may refuse to disclose information to an applicant where there is a reasonable possibility that disclosure could

- (a) prejudice a law enforcement matter;
- (b) prejudice the defence of Sawridge or Canada or of any foreign state allied to or associated with Sawridge or Canada or harm the detection, prevention or suppression of espionage, sabotage or terrorism;
- (c) impair the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement;
- (d) reveal the identity of a confidential source of law enforcement information;
- (e) endanger the physical health or safety of a law enforcement officer or any other person;
- (f) deprive a person of the right to a fair trial or impartial adjudication;
- (g) reveal a record that has been confiscated from a person by a peace officer in accordance with a law;
- (h) facilitate the escape from custody of an individual who is being lawfully detained;
- (i) facilitate the commission of an unlawful act or hamper the control of crime;
- (j) reveal technical information relating to weapons or potential weapons;
- (k) prejudice the security of any property or system, including a building, a vehicle, a computer system or a communications system; or
- (l) reveal information in a correctional record supplied, explicitly or implicitly, in confidence.

*Disclosure exposing person to civil liability*

(2) The head of a Sawridge body may refuse to disclose information to an applicant where the information

- (a) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or an individual who has been quoted or paraphrased in the record; or
- (b) is about the history, supervision or release of an individual who is under the control or supervision of a correctional authority and the disclosure could reasonably be expected to hamper the proper control or supervision of that individual.

*Disclosure of an offence under an Act of Canada*

- (3) The head of a Sawridge body shall refuse to disclose information to an applicant where the information is in a law enforcement record and the disclosure would be an offence under an Act of Canada.

*Routine inspection or statistical report*

- (4) Subsections (1) and (2) do not apply to
  - (a) a report prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an Act; or
  - (b) a report, including statistical analysis, on the degree of success achieved in a law enforcement program unless disclosure of the report could reasonably be expected to have a result referred to in subsection (1), (2), or (3).

*Disclosure of reasons not to prosecute*

- (5) After a law enforcement investigation is completed, the head of a Sawridge body shall not refuse to disclose under this section the reasons for a decision not to prosecute.

*Disclosure harmful to another individual's safety*

- 21. (1) The head of a Sawridge body may refuse to disclose to an applicant information, including personal information about the applicant, where the disclosure could reasonably be expected to endanger the mental or physical health or safety of an individual other than the applicant.

*Disclosure harmful to applicant's safety*

- (2) The head of a Sawridge body may refuse to disclose to an applicant personal information about the applicant if, in the opinion of a medical or other expert, the disclosure could reasonably be expected to result in immediate and grave danger to the applicant's mental or physical health or safety.

*Confidential evaluations*

22. The head of a Sawridge body may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled solely for the purpose of determining the applicant's suitability, eligibility or qualifications for employment or for the awarding of government contracts or other benefits when the information has been provided to the Sawridge body, explicitly or implicitly, in confidence.

*Personal privacy of third party*

23. (1) The head of a Sawridge body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

*Presumption of unreasonable invasion of privacy*

- (2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where
- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
  - (b) the personal information was compiled and is identifiable as part of an investigation into a possible contravention of law, except to the extent that disclosure is necessary to prosecute the contravention or continue the investigation;
  - (c) the personal information relates to eligibility for social assistance, student financial assistance, legal aid or other social benefits or to the determination of benefit levels;
  - (d) the personal information relates to employment, occupational or educational history;
  - (e) the personal information was obtained on a tax return or gathered for the purpose of collecting a tax or fee;
  - (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or credit worthiness;



- (g) the personal information consists of personal recommendations or evaluations about the third party, character references or personnel evaluations;
- (h) the personal information consists of the third party's name where
  - (i) it appears with other personal information about the third party, or
  - (ii) the disclosure of the name itself would reveal personal information about the third party;
- (i) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation; or
- (j) the personal information indicates the third party's race, religious beliefs, colour, gender, age, ancestry or place of origin.

*Consideration of relevant circumstances*

- (3) In determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a Sawridge body must consider all the relevant circumstances, including whether
  - (a) the disclosure is desirable for the purpose of subjecting the activities of the Sawridge Government or a Sawridge body to public scrutiny;
  - (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment;
  - (c) the personal information is relevant to a fair determination of the applicant's rights;
  - (d) the disclosure will assist in researching or validating the claims, disputes or grievances of Indigenous people;
  - (e) the third party will be exposed unfairly to financial or other harm;
  - (f) the personal information has been supplied in confidence;
  - (g) the personal information is likely to be inaccurate or unreliable; and
  - (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

*Circumstances where no unreasonable invasion of privacy*

- (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where
- (a) the third party has, in writing, consented to or requested the disclosure;
  - (b) there are compelling circumstances affecting the health or safety of any person and notice of the disclosure is mailed to the last known address of the third party;
  - (c) the disclosure is for research purposes and is in accordance with provisions of this Act;
  - (d) the personal information relates to the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a Sawridge body or as a member of the staff of a member of the Council;
  - (e) the personal information relates to expenses incurred by the third party while travelling at the expense of a Sawridge body;
  - (f) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a Sawridge body, but not personal information supplied in support of the application for the benefit;
  - (g) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a Sawridge body, but not personal information supplied in support of the application for the benefit or that is referred to in paragraph 23(2)(c); or
  - (h) the disclosure reveals financial and other details of a contract to supply goods or services to a Sawridge body.

*Summary of refusal information*

- (5) On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the Sawridge body shall give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.

*Summary prepared by third party*

- (6) The head of the Sawridge body may allow the third party to prepare the summary of personal information.

*Business interests of third party*

24. (1) Subject to subsection (2), the head of a Sawridge body shall refuse to disclose to an applicant
- (a) information that would reveal trade secrets of a third party;
  - (b) financial, commercial, scientific, technical or labour relations information
    - (i) obtained in confidence, explicitly or implicitly, from a third party, or
    - (ii) that is of a confidential nature and was supplied by a third party in compliance with a lawful requirement;
  - (c) information the disclosure of which could reasonably be expected to
    - (i) result in undue financial loss or gain to any person,
    - (ii) prejudice the competitive position of a third party,
    - (iii) interfere with contractual or other negotiations of a third party, or
    - (iv) result in similar information not being supplied to a Sawridge body;
  - (d) information about a third party obtained on a levy return or gathered for the purpose of determining levy liability or collecting a levy;
  - (e) a statement of a financial account relating to a third party with respect to the provision of routine services by a Sawridge body;
  - (f) a statement of financial assistance provided to a third party by a prescribed corporation or board; or
  - (g) information supplied by a third party to support an application for financial assistance mentioned in paragraph (f).

*Disclosure with consent or legislative authority*

- (2) A head of a Sawridge body may disclose information described in subsection (1)
- (a) with the written consent of the third party to whom the information relates;  
or
  - (b) if an Act or regulation of Sawridge First Nation authorizes or requires the disclosure.

*Information that is or will be available to the public*

25. (1) The head of a Sawridge body may refuse to disclose to an applicant information that is otherwise available to the public or that will become public within six months after the applicant's request is received, whether or not for a fee.

*Notifying applicant of availability*

(2) Where the head of a Sawridge body refuses to disclose information under subsection (1), the head shall inform the applicant where the information is or will be available.

*Financial Information of the First Nation*

26. (1) The head of a Sawridge body shall refuse to disclose any financial information of the Sawridge First Nation unless the applicant (who is an Elector) first agrees to keep the information confidential as set out in Article 17 of the Constitution.

*Access permitted by Constitution*

(2) Where an applicant has complied with subsection 1 and Article 17 of the Constitution the head of a Sawridge body shall permit the Elector and that Elector's qualified legal representative and qualified accountant to inspect the budget, financial statements, auditors report, and any annual report in accordance with Article 17 of the Constitution, but no copies may be taken.

*Additional Financial Information*

(3) Where an applicant has complied with subsection 1 and Article 17 of the Constitution the head of a Sawridge body may permit the Elector and that Elector's qualified legal representative and qualified accountant to inspect such other financial information of the Sawridge First Nation as the Council may approve in accordance with Article 17 of the Constitution, but no copies may be taken.

*Information that is Confidential in Accordance with the Constitution*

27. (1) The head of a Sawridge body may refuse to disclose any information under this Act that is specified by the Sawridge Constitution to be Confidential.

*Access provided in Constitution*

- (2) Where the Sawridge Constitution requires the disclosure of confidential information on a confidential basis, the head of a Sawridge body shall permit such disclosure on a confidential basis.

*Fees for Access under Constitution*

- (3) The Council may by regulation fix the administrative service fees for inspection to cover the costs of supervision during inspections as provided for in the Constitution.

PART III  
THIRD PARTY INTERVENTION

*Notifying third party of proposed disclosure*

28. (1) Where the head of a Sawridge body is considering giving access to a record that may contain information
- (a) the disclosure of which would be an unreasonable invasion of a third party's personal privacy pursuant to this Act, or
  - (b) that affects the interests of a third party pursuant to this Act, the head shall, where reasonably possible, give written notice without delay to the third party in accordance with subsection (2) of this section.

*Content of notice*

- (2) The notice must
  - (a) state that a request has been made for access to a record that may contain information the disclosure of which may affect the interests or invade the personal privacy of the third party;
  - (b) describe the contents of the record;
  - (c) state that the third party may, within 60 days after the notice is given, consent in writing to the disclosure or make representations to the Sawridge body explaining why the information should not be disclosed; and
  - (d) include a copy of the record or part of it containing the information in question.

*Head may dispense with notice*

- (3) Where, in the opinion of the head of a Sawridge body, it is not reasonably possible to provide notice to a third party under subsection (1), the head may dispense with the giving of notice.

*Notice of third party rights*

- (4) Where notice is given under subsection (1), the head of the Sawridge body must also give the applicant a notice stating that
- (a) the record requested by the applicant may contain information the disclosure of which would affect the interests or invade the personal privacy of a third party; and
  - (b) the third party is being given an opportunity to make representations concerning disclosure.

*Decision of head to give or refuse access*

29. (1) The head of the Sawridge body shall decide whether or not to give access to the record or to part of the record not later than 90 days after notice is given under subsection 28(1), but no such decision may be made before the earlier of
- (a) 61 days after the day on which notice is given; or
  - (b) the day a response is received from the third party.

*Notice of decision*

- (2) The head of the Sawridge body shall give written notice of a decision made under subsection (1), including reasons for the decision, to the applicant and the third party.

*Notice of right to request review of access grant*

- (3) Where the head of the Sawridge body decides to give access to the record or part of the record, the notice must state that the applicant will be given access unless the third party asks for a review under subsection 30(2) within 30 days after the day on which notice is given.

*Notice of right to request review of access refusal*

- (4) Where the head of the Sawridge body decides not to give access to the record or part of the record, the notice must state that the applicant may ask for a review pursuant to this Part within 30 days after the day on which notice is given.

PART IV  
REVIEW AND APPEAL

*Review by Information Commissioner*

*Right of applicant to request review*

30. (1) A person who makes a request to the head of a Sawridge body for access to a record or for correction of personal information may ask the Information Commissioner to review any decision, act or failure to act of the head that relates to that request.

*Right of third party to request review*

(2) A third party may ask the Information Commissioner to review a decision made under the previous Part to give access to a record or part of a record that affects the interests or invades the personal privacy of the third party.

*Time limit for requesting review*

31. A request for a review of a decision of the head of a Sawridge body must be delivered in writing to the Information Commissioner within 30 days after the person asking for the review is given notice of the decision.

*Notifying others of review*

32. On receiving a request for a review, the Information Commissioner shall give a copy to the head of the Sawridge body concerned and to

- (a) the applicant, where a third party asked for the review; or
- (b) a third party whose personal privacy may be invaded by a disclosure of personal information pursuant to this Act or whose interests may be affected by a disclosure of information under this Act, where the applicant asked for the review.

*Review by Information Commissioner*

33. (1) Subject to subsection (2), the Information Commissioner shall conduct a review and may decide all questions of fact and law arising in the course of the review.

*Refusal to conduct review*

(2) The Information Commissioner may refuse to conduct a review or may discontinue a review if, in his or her opinion, the request for a review

- (a) is frivolous or vexatious;

- (b) is not made in good faith;
- (c) concerns a trivial matter; or
- (d) amounts to an abuse of the right to access.

*Time limit for review*

- (3) Except when a review is not conducted or is discontinued under subsection (2), a review must be completed within 180 days after the receipt by the Information Commissioner of the request for the review.

*Review to be private*

34. (1) A review must be conducted in private.

*Opportunity to make representations*

- (2) The person who asked for the review, the head of the Sawridge body concerned and any other person given a copy of the request for a review pursuant to this Act must be given an opportunity to make representations to the Information Commissioner during the review.

*No right to be present during review*

- (3) No one is entitled as of right to be present during a review or to have access to, or to comment on, representations made to the Information Commissioner by any other person.

*Onus at review of refusal to give information*

35. (1) On a review of a decision to refuse an applicant access to all or part of a record, the onus is on the head of the Sawridge body to establish that the applicant has no right of access to the record or part.

*Onus at review of refusal to give third party information*

- (2) On a review of a decision to refuse an applicant access to all or part of a record that contains personal information about a third party, the onus is on the applicant to establish that disclosure of the information would not be contrary to this Act or the regulations.

*Onus at review of grant of third party information*

- (3) On a review of a decision to give an applicant access to all or part of a record containing information that relates to a third party,



- (a) in the case of personal information, the onus is on the applicant to establish that disclosure of the information would not be contrary to this Act or the regulations; and
- (b) in any other case, the onus is on the third party to establish that the applicant has no right of access under this Act to the record or the part of the record.

*Powers of Information Commissioner*

36. Despite any other Act or any privilege available at law, the Information Commissioner may, after receiving a request for a review, require the production of and examine any record to which this Act applies that is in the custody or under the control of the Sawridge body concerned.

*Information Commissioner to report*

37. On completing a review, the Information Commissioner shall

- (a) prepare a written report setting out the recommendations of the Information Commissioner with respect to the matter and the reasons for the recommendations; and
- (b) send a copy of the report to the person who asked for the review, the head of the Sawridge body concerned and any other person given a copy of the request for a review pursuant to this Act.

*Decision of head*

38. Within 30 days after receiving the report of the Information Commissioner, the head of the Sawridge body concerned shall

- (a) make a decision to follow the recommendation of the Information Commissioner or make any other decision the head considers appropriate; and
- (b) give written notice of the decision to the Information Commissioner, the person who asked for the review and any other person given a copy of the request for a review pursuant to this Act.

***Appeal to Court of Competent Jurisdiction***

*Appeal of decision of head*

39. (1) An applicant or a third party may appeal a decision made by a head of a Sawridge body to a court of competent jurisdiction.

*Notice of appeal*

- (2) An applicant or third party who wishes to appeal a decision of a head shall file a notice of appeal with a court of competent jurisdiction and serve the notice on the head within 30 days after the day the appellant receives the written notice of the decision.

*Written notice to third party*

- (3) A head who has refused an application for access to a record or part of a record shall, as soon as is reasonably practicable after receipt of the notice of appeal, give written notice of the appeal to any third party to whom a report was sent pursuant to this Act.

*Written notice to applicant*

- (4) A head who has granted an application for access to a record or part of a record shall, as soon as is reasonably practicable after receipt of the notice of appeal, give written notice of the appeal to the applicant.

*Parties to appeal*

- (5) An applicant or a third party who has been given notice of an appeal under this section may appear as a party to the appeal.

*Information Commissioner not a party*

- (6) The Information Commissioner is not a party to an appeal.

*Functions of The Court of Competent Jurisdiction on Appeal*

40. (1) On an appeal, the court of competent jurisdiction shall make its own determination of the matter and may examine in private any record to which this Act applies in order to determine whether the information in the record may be withheld under this Act.

*Onus on appeal*

- (2) This Act applies with such modifications as the circumstances require to proceedings on an appeal.

*Precautions to avoid disclosure*

- (3) The court of competent jurisdiction shall take every reasonable precaution, including, where appropriate, receiving representations without notice to others and conducting hearings in private, to avoid disclosure by the Court or any person of

- (a) any information or other material if the nature of the information or material could justify a refusal by a head to give access to a record or part of a record; or
- (b) any information as to whether a record exists if the head, in refusing to give access, does not indicate whether the record exists.

*Disclosure of information relating to offence*

- (4) The court of competent jurisdiction may disclose to an appropriate official of the Sawridge Government information that relates to the commission of an offence if, in the opinion of the Court, there is evidence of the commission of the offence.
- (5) The appropriate official receiving the disclosure shall
  - (a) decide upon the proper and correct action to be taken,
  - (b) take the action decided upon, and
  - (c) at the next meeting of the Sawridge Assembly, report on the matter and the action taken, without disclosing any confidential information.

*Decision to give access*

41. (1) Where the court of competent jurisdiction determines that the head of a Sawridge body is required to give access to a record or part of it under this Act, the Court shall order the head to give the applicant access to the record or the part of it, subject to any conditions the Court considers appropriate.

*Decision to refuse access*

- (2) Where the court of competent jurisdiction determines that the head of a Sawridge body is required to refuse access to a record or part of it under this Act, the Court shall order the head not to give access to the record or the part of it.

## GENERAL

*Fees*

42. (1) The head of a Sawridge body may require an applicant who makes a request pursuant to this Act to pay the prescribed fees for services provided.

*Provision of fee estimate to applicant*

- (2) Where an applicant is required to pay fees for services, the head of the Sawridge body shall give the applicant an estimate of the total fee before providing the services.

*Manner of giving notice*

43. (1) Where this Act requires notice to be given to a person, it is to be given
- (a) by sending it to that person by prepaid mail to the last known address of that person;
  - (b) by personal service; or
  - (c) by substitutional service, where so authorized by the Information Commissioner.

*Where notice given by mail*

- (2) Where notice is given by prepaid mail under paragraph (1)(a), the notice is deemed to have been given on the fifteenth day after the day on which it is mailed.

*Where notice given by substitutional service*

- (3) Where notice is given by substitutional service under paragraph (1)(c), the notice is deemed to have been given on a day provided for by the Information Commissioner when he or she authorized the substitutional service.

*Exercise of rights by other persons*

44. (1) Any right or power conferred on an individual by this Act may be exercised
- (a) where the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate;
  - (b) where a guardian or trustee has been appointed for the individual, by the guardian or trustee if the exercise of the right or power relates to the powers and duties of the guardian or trustee;
  - (c) where a power of attorney has been granted by the individual, by the attorney if the exercise of the right or power relates to the powers and duties of the attorney conferred by the power of attorney;

- (d) where the individual is a minor, by a person who has lawful custody of the minor in circumstances where, in the opinion of the head of the Sawridge body concerned, the exercise of the right or power by that person would not constitute an unreasonable invasion of the privacy of the minor; or
- (e) by any person with written authorization from the individual to act on the individual's behalf.

*Notice to person exercising rights*

- (2) A notice required to be given to an individual under this Act may be given to the person entitled, under subsection (1), to exercise the individual's rights or powers.

*Power to authorize a Sawridge body to disregard requests*

45. The Information Commissioner may, at the request of the head of a Sawridge body, authorize the Sawridge body to disregard a request made pursuant to this Act that
- (a) is frivolous or vexatious;
  - (b) is not made in good faith;
  - (c) concerns a trivial matter;
  - (d) amounts to an abuse of the right to access; or
  - (e) would unreasonably interfere with the operations of the Sawridge body because of its repetitious or systematic nature.

*Immunity from liability of Sawridge body or head*

46. No action lies against the Sawridge Government, a Sawridge body or the head or any officer or an employee of a Sawridge body for
- (a) the giving or withholding, in good faith, of any information under this Act or any consequences that flow from the giving or withholding of that information; or
  - (b) the failure to give any notice required under this Act where reasonable care is taken to give the required notice.

*Immunity from liability of Information Commissioner*

47. (1) No action lies against the Information Commissioner, a former Information Commissioner or any other person who is or was employed in or engaged by the Office of the Information Commissioner for anything done or not done in good faith under this Act.

*Immunity from liability of provider of information*

- (2) No action lies against a person who in good faith provides information or gives evidence in a proceeding pursuant to this Act to the Information Commissioner or to a person employed in or engaged by the Office of the Information Commissioner.

*Duty of confidentiality of Information Commissioner*

48. (1) The Information Commissioner shall not disclose any information that comes to his or her knowledge in the exercise of the powers or performance of the duties or functions of the Information Commissioner under this Act.

*Duty of confidentiality of employees*

- (2) Subsection (1) applies, with such modifications as the circumstances may require, to persons employed in or engaged by the Office of the Information Commissioner.

*Right of disclosure*

- (3) Notwithstanding subsection (1), the Information Commissioner may disclose,
- (a) in the course of a review, any matter that he or she considers necessary to disclose to facilitate the review; and
  - (b) in a report prepared under this Act, any matter that he or she considers necessary to disclose to establish grounds for the findings and recommendations in the report.

*Exception*

- (4) When making a disclosure under subsection (3), the Information Commissioner shall not disclose
- (a) any information or other material where the nature of the information or material could justify a refusal by the head of a Sawridge body to give access to a record or part of a record; or
  - (b) any information about whether a record exists where the head, in refusing to give access, has not indicated whether the record exists.

*Disclosure to Appropriate Sawridge Official*

- (5) Notwithstanding subsection (1), the Information Commissioner may disclose to an appropriate Sawridge official information that relates to the commission of an offence.
- (6) The appropriate official receiving the disclosure shall
  - (a) decide upon the proper and correct action to be taken,
  - (b) take the action decided upon, and
  - (c) at the next meeting of the Sawridge Assembly, report on the matter and the action taken, without disclosing any confidential information.

*Non-compellability*

49. The Information Commissioner or a person employed in or engaged by the Office of the Information Commissioner may not be compelled to give evidence in a court or in a proceeding of a judicial nature concerning any information that comes to his or her knowledge in the exercise of the powers or performance of the duties or functions of the Information Commissioner under this Act.

*Immunity from prosecution*

50. No person is liable to prosecution for an offence under any enactment by reason only of that person's compliance with a requirement or recommendation of the Information Commissioner under this Act.

*Misuse of personal information an offence*

51. (1) Every person who knowingly collects, uses or discloses personal information in contravention of this Act or the regulations is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding \$5,000.

*Obstruction an offence*

- (2) Every person who willfully
  - (a) obstructs the Information Commissioner or any other person in the exercise of the powers or performance of the duties or functions of the Information Commissioner or other person under this Act,
  - (b) fails to comply with any lawful requirement of the Information Commissioner or any other person under this Act, or

- (c) makes any false statement to, or misleads or attempts to mislead, the Information Commissioner or any other person in the exercise of the powers or performance of the duties or functions of the Information Commissioner or other person under this Act, is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding \$5,000.

## PART V ADMINISTRATION

### THE INFORMATION COMMISSIONER

#### *Appointment of Information Commissioner*

52. (1) The Sawridge Assembly shall appoint an Information Commissioner after consultation with the members of the Assembly and approval of the appointment by resolution of the Assembly to carry out the duties and functions set out in this Act and shall undertake other duties and functions in addition as required by other legislation.

#### *Term of office*

- (2) Subject to the section below, the Information Commissioner holds office during good behavior for a term of seven years, but may be removed for cause by the Sawridge Assembly at any time by a two-thirds vote of the Assembly.

#### *Continuation after expiry of term*

- (3) A person holding office as Information Commissioner continues to hold office after the expiry of his or her term of office until he or she is reappointed, a successor is appointed or a period of six months has expired, whichever first occurs.

#### *Reappointment*

- (4) A person may be reappointed as Information Commissioner.

#### *Privacy Commissioner*

- (5) The person appointed to the post of Privacy Commissioner may also be appointed to the office of Information Commissioner.



*Resignation*

53. (1) The Information Commissioner may resign at any time by notifying the Speaker of the Assembly or, if there is no Speaker, by notifying the Clerk of the Assembly.

*Suspension*

(2) If the Assembly is not sitting, the Speaker, on the recommendation of the Elders Commission, may suspend the Information Commissioner for cause or incapacity.

*Acting Information Commissioner*

54. (1) The Speaker, on the recommendation of the Elders Commission, may appoint an acting Information Commissioner where

- (a) the Information Commissioner is temporarily absent because of illness or for another reason;
- (b) the office of Information Commissioner is or becomes vacant when the Assembly is not sitting;
- (c) the Information Commissioner is suspended when the Assembly is not sitting; or
- (d) the Information Commissioner is removed or suspended or the office of the Information Commissioner becomes vacant and no recommendation has been made by the Assembly pursuant to this Act.

*Term of acting Information Commissioner*

(2) An acting Information Commissioner holds office until

- (a) a person is appointed as Information Commissioner pursuant to this Act,
- (b) the suspension of the Information Commissioner ends, or
- (c) the Information Commissioner returns to office after a temporary absence, whichever is the case.

*Oath of office*

55. Before undertaking the duties of office, the Information Commissioner shall take an oath or affirmation of office in the form specified by the Assembly.

*Engaging services*

56. (1) The Information Commissioner may engage on a temporary basis the services of any persons necessary to assist in carrying out the duties and functions of the Information Commissioner with the approval of the Assembly.

*Oath*

(2) A person employed in or engaged by the Office of the Information Commissioner shall take an oath administered by the Information Commissioner not to disclose any information received by that person under this Act except as permitted under this Act and with the consent of the Information Commissioner.

*Delegation by Information Commissioner*

57. (1) The Information Commissioner may delegate to any person any power, duty or function of the Information Commissioner under this Act except

- (a) the power to delegate;
- (b) the power to examine information pursuant to this Act, and
- (c) the powers, duties and functions specified in sections 36, 45 and 58.

*Delegation in writing*

(2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the Information Commissioner considers appropriate.

*General powers of Information Commissioner*

58. The Information Commissioner may

- (a) engage in or commission research into matters affecting the carrying out of the purposes of this Act;
- (b) receive representations about the operation of this Act; and
- (c) offer comment on the implications for privacy protection of proposed legislative schemes or government programs.

*Annual report*

59. The Information Commissioner shall, by July 1 in each year, submit to the Assembly a report on the activities of the Information Commissioner under this Act during the previous year, including information concerning any instances where recommendations made by the Information Commissioner after a review have not been followed.

## OTHER MATTERS

### *Authorization by head*

60. (1) The head of a Sawridge body may authorize any person to exercise a power or perform a duty or function of the head under this Act except the power to authorize another person to exercise any of the powers or perform any of the duties or functions of the head under this Act.

### *Content of authorization*

(2) An authorization under subsection (1) must be in writing and may contain any limitations, restrictions, conditions or requirements that the head considers necessary.

### *Interpretation*

(3) A reference to the head of a Sawridge body in this Act or the regulations includes a person authorized by a head to exercise a power or perform a duty of the head.

### *Access to policy manuals*

61. (1) The head of a Sawridge body shall make available to the public, without a request for access under this Act,

- (a) manuals, instructions or guidelines issued to the officers or employees of the Sawridge body, and
- (b) substantive rules or policy statements adopted by the Sawridge body, for the purpose of interpreting an enactment or administering a program or activity that affects the public or a specific group of the public.

### *Information excluded from manuals*

(2) The head of a Sawridge body may delete from a record made available under this section any information he or she would be entitled to refuse to disclose to an applicant.

### *Statement of deletion*

(3) Where information is deleted, the record must include a note stating

- (a) that information has been deleted;
- (b) the nature of the deleted information; and
- (c) the reason for the deletion.

### *Copy fee*

(4) A person may obtain a copy of a record under this section on paying any required fee.

*Records available without request*

62. (1) The head of a Sawridge body may direct that categories of records that are in the custody or under the control of the Sawridge body and that do not contain personal information be made available to the public, on demand, without a request for access under this Act.

*Copy fee*

(2) A person may obtain a copy of an available record on paying any required fee.

*Regulations*

63. The Council may make regulations

- (a) designating agencies, boards, commissions, corporations, officers or other bodies as Sawridge bodies;
- (b) designating the head of a Sawridge body that is not a department, branch or office of the Sawridge Government;
- (c) prescribing procedures to be followed in making, transferring and responding to requests under this Act;
- (d) respecting fees to be paid under this Act and providing for circumstances when fees may be waived in whole or in part;
- (e) authorizing the disclosure of information relating to the mental or physical health of individuals to medical or other experts to determine, for the purposes of section 21, where disclosure of that information could reasonably be expected to threaten the mental or physical health or safety of any individual;
- (f) prescribing procedures to be followed or restrictions to be applied with respect to the disclosure and examination of information referred to in paragraph (e);
- (g) prescribing special procedures for giving individuals access to personal information about their physical or mental health and regulating the way in which that access is given;
- (h) exempting any information or category of information from the

application of subsection 42(1);

- (i) prescribing ways in which an individual may give consent;
- (j) prescribing persons to whom personal information may be disclosed for audit purposes;
- (k) respecting any matter that is to be included in a notice or report required by this Act;
- (l) prescribing forms for the purposes of this Act;
- (m) prescribing any other matter or thing required or authorized by this Act to be prescribed in the regulations; and
- (n) respecting any other matter or thing that the Council considers necessary to carry out the intent of this Act.

*Coming into force*

64. The provisions of this Act come into force sixty days after passage of the Act.