

7.1.vii. Policy**RECEIPT OF CONFIDENTIAL INFORMATION FROM EXTERNAL
GOVERNMENTAL ORGANIZATIONS AND AGENCIES****Trust Council: March 9, 2001****Amended: December 7, 2001; December 5, 2003****A: PURPOSE:**

To set the parameters and conditions under which information from external governmental sources can be received in confidence and to clarify how such information should be handled.

This policy applies to information received from Federal and Provincial governments and Crown corporations, and Local Governments external to the Islands Trust. This policy does not deal with or affect the confidential land and land interest negotiations of the Trust Fund Board. Such negotiations are confidential to the Board and Islands Trust Fund Staff. The Memorandum of Agreement between the Trust Fund Board and Trust Council will address how and when such negotiations will be discussed with Trust Council and Local Trust Committees.

B: REFERENCES:

1. *Freedom of Information and Protection of Privacy Act*
2. *Local Government Act*
3. Handling of Administrative Fairness Complaints Policy

C: EMPLOYEES

1. The Basic Rule

Employees are employees of the Trust Council and in respect of all matters that engage the Islands Trust in carrying out its statutory mandate owe a duty of undivided loyalty to the Trust Council. Except as provided in this Policy, no information received by an employee in the course of employment may be treated as confidential from the Trust Council.

2. Exceptions to the Basic Rule

- (a) An employee may fully respect and adhere to conditions of confidentiality imposed on the receipt of information from external sources in circumstances which the Trust Council or the Executive Committee has, prior to the receipt of the information, authorized the employee to receive the information on confidentiality conditions acceptable to both the Trust Council or the Executive Committee and the source of the information. Such conditions may include an

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undertaking to the employee not to disclose the information to the Trust Council or to any other Local Trust Committee. When a request is made by an external government agency to the employee, Trust Council, or Local Trust Committee to participate in meetings, the proceedings and product of which are to be confidential, the Trust Council or the Executive Committee will be able to address the confidentiality conditions in advance and agree or not as the case may be.

- (b) Despite the basic rule, the Chief Administrative Officer of the Islands Trust may fully respect and adhere to conditions of confidentiality imposed on the receipt of information from external source where the Chief Administrative Officer believes such action to be consistent with the best interests of the Islands Trust or any Islands Trust entity.

3. Unanticipated and Gratuitous Information

- (a) Where information in any recorded form is provided to an employee with an unanticipated condition of confidentiality, meant to be binding on the employee, no copies of such record should be made, and it should immediately be returned to the source with the advice that confidentiality may only be respected with the prior authorization of the Trust Council or the Executive Committee.
- (b) Where in the course of a conversation, an employee is advised in advance that what is said is to be confidential, the source should be immediately interrupted and advised that such information if imparted cannot be held in confidence without the authorization of the Trust Council or the Executive Committee. The source can then decide whether to continue or seek Trust Council or Executive Committee authorization for the employee to receive the information.
- (c) Where an oral communication to an employee is followed by an after-imposed condition of confidentiality, meant to bind the employee, the source should be immediately advised that such condition is unacceptable and cannot be respected.

4. Authorization by Trust Council or the Executive Committee

Trust Council or Executive Committee authorization for an employee to accept information on conditions of confidentiality is always subject to any obligation on the part of the Trust Council and the employee to provide records pursuant to the *Freedom of Information and Privacy Act*, or to provide records and information pursuant to any other statute, or regulation requiring its disclosure, or pursuant to any order to disclose or produce, made by any authority having jurisdiction.

D. TRUST COUNCIL AND LOCAL TRUST COMMITTEES

1. The Trust Council and a Local Trust Committee may receive any information in any medium or form on any conditions of confidentiality it chooses, provided that any undertaking of confidentiality will by law be subject to:
 - (a) Trust Council or Local Trust Committee will not be able to give an effective undertaking as to confidentiality since any mention at all of the matter is made at a Trust Council or Local Trust Committee meeting (including the agreement that the matter be confidential) it must be in public pursuant to S. 242.1 and S. 242.2 of the *Local Government Act*;
 - (b) Any obligation to provide records pursuant to the *Freedom of Information and Privacy Act* or to provide records on information pursuant to any other statute or regulation requiring its disclosure, or pursuant to any order to disclose or produce made by any authority having jurisdiction; and
 - (c) The acceptance by the source that the conditions of confidentiality bind the Trust Council or Local Trust Committee as a corporation in its corporate capacity, and cannot bind the elected individual members of the Trust Council or a Local Trust Committee in their personal and political capacity.

E. ELECTED TRUSTEES

1. Elected trustees in their personal and political capacity are not covered by this Policy. The Trust Council and Local Trust Committees are not bound by personal undertakings of confidentiality made by individual trustees. Conversely, individual trustees may personally retain any confidences they choose when information of any form or type is given to them.

F. EXECUTIVE COMMITTEE

1. The Executive Committee is not a separate corporation for the purposes of most of its functions. It is the Executive of the Trust Council and thus simply part of the Trust Council, except where it is acting as a Local Trust Committee – in which case it is a separate corporation and part “D” of this Policy applies to it in that capacity.
2. Where the Executive Committee is acting merely as the Executive of the Trust Council (S.21 (1)(c) of the *Islands Trust Act*), its members are part of the Trust Council, and as an entity the Executive Committee has no legal capacity to enter into agreements with other governmental bodies relating to confidentiality, and any information provided to the Executive Committee in its capacity as the Executive Committee in relation to the mandate of the Islands Trust should not be confidential from the Trust Council.
3. Individual members of the Executive Committee receiving information in their personal or political capacity are governed by Part “E” of this Policy.

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