
A CODE RESPECTING THE ACCESS TO INFORMATION & PRIVACY MANAGEMENT

Whereas, the Chief and Council of the Kapawe'no First Nation have determined that it is desirable and necessary for the better administration of the Kapawe'no First Nation's business to establish an Access To Information and Privacy Code to regulate the access and disclosure of their recorded and personal information held at their First Nations, and

Whereas, the Chief and Council of the Kapawe'no First Nation have identified the importance of protecting all their recorded and personal information of their past and present documentation of all of their programs, their historical and archival, their justice; their social development; their governance; their membership; their financial; their educational, and their health data, so that nothing is lost, for future long-term use.

Now Therefore, the Chief and Council of the Kapawe'no First Nation at a duly convened meeting of a quorum of the Chief and Council, hereby enacts the following code to govern administration of recorded and personal information.

SHORT TITLE

1. This Code may be cited as the **Access To Information And Privacy Code For Kapawe'no First Nation**.

PURPOSE OF CODE

2. The purpose of this Code is to provide Kapawe'no First Nation with the necessary tool to govern its own Access To Information and Privacy Code in accordance with all of its parts therein, including the guide, as follows:
 - Part 1 – Purpose of Code
 - Part 2 – Access to Information Provisions
 - Part 3 – Protection of Privacy Provisions
 - Part 4 – Third Party Intervention
 - Part 5 – Reviews and Reports
 - Part 6 – General Provisions
 - Part 7 – Fees
 - Part 8 – Representatives
 - Guide (all parts, including appendices)
3. The Kapawe'no First Nation shall disclose the following information to its members, to other governments or to other parties:
 - (a) **Band audit information** to the extent that:



- (1) this disclosure is required by legislation, contract agreement or arrangement, and
 - (2) the information should be included in an audit according to accepted audit practices;
- (b) **Membership information** to the extent that:
- (1) this disclosure is required by legislation, contract agreement or arrangement, and
 - (2) the contract, agreement or arrangement complies with the section on 'disclosure' of this Code;
- (c) **Information about contractual or other negotiations** carried on or to be carried on by or on behalf of the Kapawe'no First Nation, and considerations relating thereto, to the extent that:
- (1) this disclosure is required by the negotiations or to ratify the plans or positions of the Kapawe'no First Nations, and
 - (2) this disclosure would not reasonably be expected to interfere with the contractual or other negotiations of the Kapawe'no First Nation.

4. The Kapawe'no First Nation shall disclose to its members, the **minutes of Chief and Council meetings, except for meetings held in camera.**

AMENDMENTS AND REPEAL

Amendment or repeal of this code shall require a majority vote in favor of amendment or repeal by the Chief and Council at a duly convened meeting of a quorum of the Chief and Council and a ratification by a majority of the members of the Kapawe'no First Nation present and voting at a meeting of the membership called for the purpose of considering the amendment or repeal.

THIS CODE IS HEREBY ENACTED at a duly convened meeting of the Chief and Council of the Kapawe'no First Nation this ____ day of _____, 2003.

Voting in favor of enacting the code are the following members of the Chief and Council of the Kapawe'no First Nation:

Chief Frank T. Halcrow

Witness



Councillor Sydney Lee Halcrow

Witness

Councillor Peter H. Chalifoux

Witness

I hereby certify that the above Code was duly ratified by a majority of the members of the _____ First Nation present and voting at a meeting of the membership held at _____, Alberta on the _____ day of _____, 2003.

Signed at _____ This ____ day of _____, 2003

Chief Frank T. Halcrow, Kapawe'no First Nation.



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Background

During discussions at the Alberta Chiefs' Summit 1999, and subsequently during work being done on the Financial Accountability Initiative, concerns and interests were expressed regarding Access to Information and Privacy (ATIP) issues. In response to this, the Chiefs' Steering Committee on Financial Accountability undertook a project with the objectives of identifying First Nations' ATIP interests and concerns, and providing a tool for individual First Nations who wish to develop their own ATIP code or policy.

The work was carried out in three phases: the first, directed by the First Nations' Resource Council (1999) with the assistance of InfoSolution (Marcel Gauthier), and the second and third phases, by the Treaty 8 First Nations of Alberta (2000) with the assistance of Rosie Vermilion, Liaison Officer, Accountability Initiatives.

In order to take advantage of the work done by others, most of this code was developed using the pragmatic and proven principles found in ATIP legislation of the federal and provincial governments. The provisions in this code differ from those found in these governments' legislation to the extent required in light of the principles and circumstances that are unique to First Nations. The code is a complete and sound set of provisions for governing access to information and privacy.

This ATIP code is a tool for individual First Nations who wish to implement their own ATIP code or policy. To develop its own ATIP code or policy, a First Nation will add to, delete from, or modify the provisions provided in the Guide (provisions are in italics) as required to create a code or policy that reflects and is relevant to its circumstances, including its organization and culture. In order to ensure that its code or policy is complete and sound, the First Nation should review all of its existing rules regarding disclosure and protection of information, incorporate these as appropriate in its ATIP code or policy, and the code or policy should then replace all of these rules. The Guide includes options and explanations to facilitate the task of moulding it as required by the uniqueness and diversity of individual First Nations. By using provisions that reflect the particular circumstances of the First Nation, and the generally accepted principles for protection and disclosure of information, a First Nation should be able to develop an ATIP code or policy that is recognizable by an objective outside party as a comprehensive and appropriate ATIP code or policy.

In developing its own ATIP code or policy, a First Nation should keep the following in mind. The word "may" denotes the conferring of a power or discretion, while the word "shall" denotes a requirement or obligation to comply with the provision. While the code or policy should be concise, repetition and precision are required to prevent there being more than one possible interpretation for provisions of the code or policy. Each provision should be clear and definite. For this reason, the same wording or language should be repeated to express the same idea in different parts of the code or policy. Any variations in wording in the code or policy will normally be construed as indicating different ideas. To reduce some of the repetition, recurring lengthy phrases can be replaced by one or a few words as long as these words are appropriately defined in the part of the code or policy that contains the definitions. Definitions are also used when there is a need to expand or narrow the common definition of a word. In finalizing the code



or policy, the numbering of the code or policy's provisions will have to be reviewed and amended as appropriate, including the references to these within the text.

Part 1- Introductory Provisions

Purpose of Code (s.1)

1 *The purposes of this Code are:*

- (a) *to provide a right of access to recorded information that is under the control of the Kapawe'no First Nation, subject to the limited and specific exceptions set out in this Code;*
- (b) *to provide individuals with a right of access to personal information about themselves that is under the control of the Kapawe'no First Nation, subject to the limited and specific exceptions set out in this Code;*
- (c) *to provide individuals with a right to request corrections to personal information about themselves that is under the control of the Kapawe'no First Nation;*
- (d) *to protect the privacy of individuals by controlling the manner in which personal information is collected, used and disclosed by the Kapawe'no First Nation; and*
- (e) *to provide for reviews of decisions made under this Code and the resolution of complaints under this Code.*

Scope of Code (s.2)

2(1) *This Code **applies** to all recorded information that is under the control of the Kapawe'no First Nation, including information held by other parties on behalf of the Kapawe'no First Nation, except as provided in subsection 2(2).*

2(2) *This Code **does not apply** to information that is:*

- (a) *recorded or stored electronically and that cannot be extracted using the Kapawe'no First Nation's normal hardware, software and technical expertise;*
- (b) *a question that is to be used on an examination or test;*
- (c) *under the control of a band-owned company(see Guide PI/s.2.2(c) - Scope of Code);*
- (d) *in a library or museum material preserved solely for public reference or exhibition;*
- (e) *in published material or material available for purchase; and*
- (f) *personal or political information held by an elected official and not under the control of the Kapawe'no First Nation.*



- 2(3) *This Code does not replace existing procedures for access to information, does not affect the power of a person or body with the jurisdiction to compel the production of information, and does not limit the need to comply with rules of court relating to the production of information.*

Definitions (s.3)

3 *In this Code,*

"Applicant" means a person who makes a request for access to recorded information under s.6 or s.7(P2/pg.10- Requests for Access);

"Appropriate officer" means the officer or officers appointed by the Chief and Council pursuant to s.51.1(P6/pg.38-General Provisions);

"First Nation" means the Kapawe'no First Nation;

"Law enforcement" means any action taken for the purpose of enforcing an enactment, including:

(a) policing, including criminal intelligence operations,

(b) investigations that lead or could lead to a penalty or sanction being imposed or

(c) proceedings that lead or could lead to a penalty or sanction being imposed;

" Lawful investigation" means an investigation that is not contrary to law and that:

(a) leads or could lead to a penalty or sanction being imposed; or

(b) is or was undertaken for the purpose of investigating any illegal activity or suspected illegal activity;

"Personal information" means recorded information about an identifiable individual including, but not restricted to:

(a) information relating to the race, nationality or ethnic origin, colour, religion, age or marital status of the individual,

(b) information relating to the education, or the medical, criminal, and employment history of the individual's information relating to financial transactions in which the individual has been involved;

(c) any identifying number, symbol or other particularities assigned to the individual;

(d) the address, fingerprints or blood type of the individual;



- (e) *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 the Kapawe'no First Nation;*
- (f) *correspondence sent to the Kapawe'no First Nation by the individual, directly or indirectly, of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence;*
- (g) *the views or opinions of another individual about the individual;*
- (h) *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 the Kapawe'no First Nation, but excluding the name of the other individual where it appears with the views or opinions of the other individual, and*
- (i) *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 s.26(P2/pg. 21-Exceptions to Disclosure); s.34(P3/pg.24- Use); s.35 and 36(P3/Pg.25-29- Disclosure), does not include:

- (j) *information about an individual who is or was an officer or employee of the Kapawe'no First Nation 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 Kapawe'no First Nation;*
 - (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;*
- (k) *information about an individual who is or was performing services under contract for the Kapawe'no First Nation 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;*
- (l) *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;*
- (m) *information that is available to the public;*



- (n) information about an individual who has been dead for more than twenty years, and
- (o) information about an individual contained in a record that is more than 100 years;

“Recorded information” means any information that is recorded or stored mechanically, electronically or by other means or that is contained in any physical form or medium, including without restricting the generality of the foregoing, any information in correspondence, papers, documents, books, plan, maps, drawings, diagrams, pictorial or graphic works, photographs, films, microforms, sound recordings, videotapes, machine readable records, and any copies or drafts thereof;

“Third party” means any person, group of persons or organization other than the applicant or the Kapawe’no First Nation,

“Under the control” with respect to information, means that the Kapawe’no First Nation is authorized to:

- (a) grant or deny access to this information,
- (b) govern the use of this information, and
- (c) dispose of this information

and includes information held elsewhere on behalf of the Kapawe’no First Nation, but does not include personal or political information that is held by an elected official and that is not under the control of the Kapawe’no First Nation.

Part 2- Access to Information Provisions

Right of Access (ss.4 and 5)

- 4(1) Subject to this Code, every member of the Kapawe’no First Nation has a right of access to any **recorded information** that is under the control of the Kapawe’no First Nation, and every person has a right of access to any **personal information** that is about the applicant and that is under the control of the Kapawe’no First Nation.
- 4(2) The right of access **does not extend** to recorded information that is protected from disclosure under this Code, **but** if that information can reasonably be severed from the requested recorded information, the applicant has a right of access to the remainder of the requested information.
- 4(3) The right of access is subject to the **payment** of any fee required by this Code as set out in s.55(1) to 64(P7/pg.40 – Fees).
- 4(4) The Kapawe’no First Nation **shall** make every reasonable effort to assist applicants with sensory disabilities in exercising their rights under this Code.



- 5(1) *The Kapawe’no First Nation **shall** disclose the following information to its members, to other governments or to other parties:*
- (a) *band audit information to the extent that:*
 - (i) *this disclosure is required by legislation, contract agreement or arrangement, and*
 - (ii) *the information should be included in an audit according to accepted audit practices;*
 - (b) *membership information to the extent that:*
 - (i) *this disclosure is required by legislation, contract agreement or arrangement, and*
 - (ii) *the contract, agreement or arrangement compiles with s.35 and 36(P3/pg.25- Disclosure) of this Code;*
 - (c) *information about contractual or other negotiations carried on or to be carried on by or on behalf of the Kapawe’no First Nation, and considerations relating thereto, to the extent that:*
 - (i) *this disclosure is required by the negotiations or to ratify the plans or positions of the Kapawe’no First Nation, and*
 - (ii) *this disclosure would not reasonably be expected to interfere with the contractual or other negotiations of the Kapawe’no First Nation.*
- 5(2) *The Kapawe’no First Nation **shall** disclose to its members, the minutes of Chief and Council meetings, except for meetings held in-camera.*
- 5(3) *Information to be disclosed pursuant to subsections 5(1) and 5(2) **shall** be provided within a period of time that is reasonable for preparing the information for disclosure,*
- 5(4) *Where access to information is given pursuant to subsections 5(1) or 5(2), the Kapawe’no First Nation **may** require that the party be given an opportunity to examine the information rather than to receive a copy of the information, except where the party has a legal or contractual right to receive a copy.*
- 5(5) *Where access to information is given pursuant to subsections 5(1) or 5(2) as an opportunity to examine the information, the Kapawe’no First Nation **shall**:*
- (a) *provide reasonable facilities for the examination;*
 - (b) *set a time for the examination that is convenient for both the Kapawe’no First Nation and the party to whom the information is being disclosed;*
 - (c) *obtain a written undertaking from the party to whom the*



information is being disclosed, that the information will not be disclosed to any other party without the written consent of Chief and Council, and

(d) *inform the party to whom the information is being disclosed, that it must be accountable for the information and that the Kapawe'no First Nation may undertake action or remedies in response to any disclosure that has not been authorized pursuant to subsection 5(5)(c).*

5(6) *In any other circumstances than those described in subsections 5(1) and 5(2) the information described therein **shall** be disclosed to an applicant subject to s.14-28(P2/pg.14 - Exceptions to Disclosure) set out in this Code, and to s.29(P2/pg.21 - Discretionary Overrides to Exceptions to Disclosure).*

Requests for Access (ss.6 to 8)

6(1) *A request for access to recorded information including personal information, **shall** be made in writing (by completing the Kapawe'no ATIP form) and **shall** provide enough details to enable the Kapawe'no First Nation to identify the recorded information and allow for it to be located.*

6(2) *The Kapawe'no First Nation **may** waive the requirement that a request be made in writing.*

6(3) *Where the Kapawe'no First Nation is unable to identify the requested recorded information, it **shall** advise the applicant and invite the applicant to supply additional details that might lead to identification and location of the requested information, and offer assistance in reformatting the request.*

6(4) *Where additional details are invited to be supplied pursuant to subsection 6(3), the request is **deemed** to be made when the applicant has provided enough detail to enable the Kapawe'no First Nation to identify the requested recorded information and allow for it to be located.*

7 *The applicant may indicate in a request that the request, if granted continues to have effect for a specified period of up to one year. If granted the Kapawe'no First Nation **shall** provide to the applicant a schedule showing dates on which the request shall be deemed to have been received. This Code applies to a request that continues to have effect for a specified period as if a new request were made on each of the dates shown in the schedule.*

8(1) *The Kapawe'no First Nation **shall** refuse requests that are frivolous (silly) or vexatious (annoying), or that because of their repetitious or systematic nature, would unreasonably interfere with its operations.*

8(2) *If the Kapawe'no First Nation is of the opinion on reasonable grounds that a request is frivolous or vexatious, or of a repetitious or systematic nature that would unreasonably interfere with its operations, it **shall** state in a notice to the applicant:*

(a) *That the request is refused because it is frivolous, vexatious or of a repetitious or systematic nature.*



- (b) *the reasons for which the Kapawe'no First Nation is of the opinion that the request is frivolous, vexatious or is of a repetitious or systematic nature that would unreasonably interfere with its operations, and*
 - (c) *that the applicant may appeal under s.45(P5/pg.34 -Reviews) for a review of the decision.*
- 8(3) *The Kapawe'no First Nation **shall** conclude that the request is frivolous or vexatious if,*
- (a) *it is of the opinion on reasonable grounds that the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with its operations; or*
 - (b) *it is of the opinion on reasonable grounds that the request is made in bad faith or for a purpose other than to obtain access.*

Access (ss.9 to 13)

- 9 *Where access to recorded information is requested under this Code, the Kapawe'no First Nation **shall**, subject to s. 10 and subsection 12(5), within thirty days after the request is received,*
- (a) *give written notice to the applicant as to whether or not access to the recorded information, or to a part thereof will be given; and*
 - (b) *if access is to be given, give the applicant access to the recorded information or to a part thereof.*
- 10(1) *The Kapawe'no First Nation **may** extend the time limit set out in s.9 in respect of a request under this Code for a reasonable period of time, having regard to the circumstances, if*
- (a) *the request is for a large amount of recorded information, or necessitates a search through a large amount of recorded information and meeting the original time limit would unreasonably interfere with the operations of the Kapawe'no First Nation, and*
 - (b) *consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or*
 - (c) *a party asks for a review under s.45(P5/pg.34 - Reviews).*
- 10(2) *If the time is extended under subsection 10(1) the Kapawe'no First Nation **shall** tell the applicant;*
- (a) *the reason for the extension,*
 - (b) *when a response can be expected, and*
 - (c) *that the applicant may make a complaint under s.45(P5/pg.34 - Reviews), about the extension.*



- 11(1) *Where the Kapawe'no First Nation refuses to give access to recorded information or to a part thereof it **shall** state in the notice given to the applicant,*
- (a) *that the requested information does not exist, or*
 - (b) *the specific provision of this Code on which the refusal was based, or*
 - (c) *that confirmation or denial of the existence of the record is refused pursuant to subsection 11(2) and,*
 - (d) *that the applicant may make a complaint under s.45(P5/pg.34 - Reviews) about the refusal.*
- 11(2) *Where requested information is protected from disclosure pursuant to this Code, or would have been protected if the information existed, the Kapawe'no First Nation **may** refuse to confirm or deny that the information exists or ever did exist.*
- 12(1) *An applicant who is given access to recorded information or to a part thereof under this Code **shall** be subject to subsections 12(2) and 12(3), and be given an opportunity to examine the recorded information or a part thereof or be given a copy of the recorded information or part thereof.*
- 12(2) *Where an applicant is given access to recorded information or to a part thereof, the Kapawe'no First Nation **may** require that the applicant be given a copy rather than an opportunity to examine it if,*
- (a) *the recorded information to be disclosed appears with recorded information protected under this Code and from which it cannot reasonably be severed for examination,*
 - (b) *providing for examination of the recorded information would unreasonably interfere with the operations of the Kapawe'no First Nation, or*
 - (c) *the recorded information is in a form that does not readily lend itself to examination.*
- 12(3) *Where an applicant is given access to recorded information or to a part thereof the Kapawe'no First Nation **may** require that the applicant be given an opportunity to examine the recorded information or a part thereof rather than giving a copy of the recorded information or part thereof if;*
- (a) *reproducing the recorded information would endanger its preservation,*
 - (b) *the recorded information or part thereof is in a form that does not readily lend itself to reproduction;*
 - (c) *the recorded information or part thereof is so lengthy that its reproduction would unreasonably interfere with the operations of the Kapawe'no First Nation; or*
 - (d) *providing a copy might result in the subsequent disclosure of information that is restricted or prohibited from disclosure under this Code.*



- 12(4) *Where access to recorded information is given in the form of an opportunity to examine the information, the Kapawe'no First Nation shall,*
- (a) *provide reasonable facilities for the examination; and*
 - (b) *set a time for the examination that is convenient both for the Kapawe'no First Nation and the applicant.*
- 12(5) *The Kapawe'no First Nation shall not give an applicant access to any recorded information until that applicant has paid any fee or other amount or part thereof required to be paid under s.55(1) to 64(P7/pg.40 - Fees), of this Code.*
- 13(1) *An applicant may be required to pay to the Kapawe'no First Nation, fees for services as provided for in part of this Code, although this does not apply to a request for the personal information of the applicant, except for the cost of producing the copy.*
- 13(2) *If an applicant is required to pay fees for services under this code, the Kapawe'no First Nation shall give the applicant an estimate of the total fee, and may require that a reasonable proportion of that amount be paid as a deposit before providing the services.*
- 13(3) *The Kapawe'no First Nation may excuse the applicant from paying all or part of a fee, and may refund all or part of a fee.*
- 13(4) *The fees referred to in ss.55(1) to 64(Fees) of this Code shall not exceed the actual costs of the services.*

Exceptions to Disclosure (ss.14 to 28)

- 14(1) *Subject to subsection 14(2) the Kapawe'no First Nation shall refuse to disclose any recorded information that was obtained in confidence from,*
- (a) *the government of a foreign country,*
 - (b) *the government of a state, province or territory of a foreign country,*
 - (c) *the government of one of the other First Nations,*
 - (d) *the Government of Canada,*
 - (e) *the government of a province or territory of Canada,*
 - (f) *a municipal regional government in Canada, or*
 - (g) *an institution or organization representing one or more of these governments.*
- 14(2) *The Kapawe'no First Nation may disclose any recorded information that is information described in subsection 14(1), if the government, organization or institution from which the information was obtained,*
- (a) *consents to the disclosure; or*



- (b) *makes the information public.*
- 15 *The Kapawe’no First Nation **may** refuse to disclose any recorded information the disclosure of which could reasonably be expected to be injurious to relations between the Kapawe’no First Nation and a party listed in s.14.*
- 16(1) *The Kapawe’no First Nation **may** refuse to disclose any recorded information the disclosure of which could reasonably be expected to:*
- (a) *prejudice, interfere with or adversely affect the detection, investigation, prevention or persecution of an offence;*
 - (b) *be injurious to the enforcement of:*
 - (i) *a provincial or federal Act or regulation; or*
 - (ii) *a resolution or bylaw;*
 - (c) *interfere with a lawful investigation or disclose information with respect to a lawful investigation;*
 - (d) *be injurious to the Kapawe’no First Nation in the conduct of existing or anticipated legal proceedings;*
 - (e) *reveal investigative techniques or procedures currently in use or likely to be used;*
 - (f) *disclose the identity of a confidential source of information or disclose information furnished by that source with respect to a lawful investigation or a law enforcement matter;*
 - (g) *deprive a person of a fair trial or impartial adjudication;*
 - (h) *facilitate the escape from custody of an individual who is under lawful detention;*
 - (i) *reveal information supplied, directly or indirectly, in confidence to a correctional authority;*
 - (j) *reveal law enforcement intelligence information;*
 - (k) *facilitate the commission of an unlawful act or hamper the control of crime;*
 - (l) *interfere with a law enforcement matter or disclose information respecting a law enforcement matter;*
 - (m) *prejudice the defence of Canada or of any foreign state allied to or associated with Canada or harm the detection, prevention or suppression of espionage, sabotage or terrorism;*
 - (n) *reveal technical information relating to weapons or potential weapons; or*



- (o) *harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.*
- 16(2) *The Kapawe’no First Nation **may** refuse to disclose any recorded information that is;*
- (a) *law enforcement information if the disclosure could reasonably be expected to expose to civil liability the author of the recorded information or an individual who has been quoted or paraphrased in the recorded information, or*
 - (b) *about the history, supervision or release of an individual who is under the control or supervision of a correctional authority if the disclosure could reasonably be expected to harm the proper custody or supervision of that person.*
- 16(3) *After a police investigation or the activities of a sentencing circle are completed, the Kapawe’no First Nation **may** disclose under this section the reasons for a decision not to prosecute or to impose a penalty or sanction;*
- (a) *to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim, or*
 - (b) *to any other member of the public, if the fact of the investigation was made public.*
- 17(1) *The Kapawe’no First Nation **may refuse** to disclose any recorded information that could reasonably be expected to harm the economic interest of the Kapawe’no First Nation, or the ability of the Kapawe’no First Nation to manage its economy, or could reasonably be expected to result in an undue benefit to any person, including, but not limited to,*
- (a) *trade secrets of the Kapawe’no First Nation;*
 - (b) *financial, commercial, scientific or technical information that belongs to the Kapawe’no First Nation or in which the Kapawe’no First Nation has a right of use;*
 - (c) *information, that belongs to the Kapawe’no First Nation or in which the Kapawe’no First Nation has a right of use and that has monetary value or is reasonably likely to have monetary value;*
 - (e) *information the disclosure of which could reasonably be expected to;*
 - (i) *result in financial loss to,*
 - (ii) *prejudice the competitive position of, or*
 - (iii) *interfere with contractual or other negotiations of the Kapawe’no First Nation;*



- (e) *information, relating to a contemplated change in taxes or any other revenue source, a contemplated sale or purchase of securities or currency, or a contemplated sale or acquisition of land or property;*
 - (f) *scientific or technical information obtained through research by an employee of the Kapawe'no First Nation, that could reasonably be expected to deprive the employee or Kapawe'no First Nation of priority of publication.*
- 17(2) *The Kapawe'no First Nation **shall not** refuse to disclose under subsection 17(1), the results of product or environmental testing carried out by or for the Kapawe'no First Nation, unless the testing was done,*
- (a) *for a fee as a service to a person, other than the Kapawe'no First Nation, or*
 - (b) *for the purpose of developing methods of testing or testing products for possible purchase.*
- 18(1) *The Kapawe'no First Nation **shall refuse** to disclose any recorded information that would reveal,*
- (a) *trade secrets of a third party;*
 - (b) *financial, commercial, labour relations, scientific or technical information that is confidential information supplied to the Kapawe'no First Nation by a third party or its representative and is treated consistently in a confidential manner by the third party;*
 - (c) *information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party;*
 - (d) *information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party;*
 - (e) *information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed, to resolve or inquire into a labour relations dispute; or*
 - (f) *information that was collected for the purpose of determining tax liability or collecting a tax.*
- 18(2) *The Kapawe'no First Nation **shall not**, pursuant to subsection 18(1), refuse to disclose recorded information that is the result of product or environmental testing carried out by or on behalf of the Kapawe'no First Nation unless the testing was done as a service to a person, a group of persons or an organization other than the Kapawe'no First Nation and for a fee.*
- 18(3) *Where the Kapawe'no First Nation discloses recorded information that is the result of product or environmental testing, the Kapawe'no First Nation **shall** at the same time as the information is disclosed provide the applicant with a written explanation of the methods used in conducting the tests.*



- 18(4) *The Kapawe'no First Nation **may** disclose any information described in subsection 18(1) with the consent of the third party to whom the information relates.*
- 18(5) *The Kapawe'no First Nation **may** disclose any information described in subsection 18(1)(b), (c) or (d), if that disclosure would be in the public interest as it relates to public health, public safety or protection of the environment and, if the public interest in disclosure clearly outweighs in importance any financial loss or gain to, prejudice to the competitive position of, or interference with contractual or other negotiations of a third party.*
- 19(1) *The Kapawe'no First Nation **may** refuse to disclose any recorded information the disclosure of which could reasonably be expected to reveal,*
- (a) *advice, proposals, recommendations, analyses or policy options developed by or for the Kapawe'no First Nation or its Chief and Councillors;*
 - (b) *an account of consultations or deliberations involving officers or employees of the Kapawe'no First Nation, the Chief or a member of Council;*
 - (c) *positions, plans, procedures, criteria or instructions developed for the purpose of negotiations carried on, or to be carried on by or on behalf of the Kapawe'no First Nation and considerations that relate to those negotiations;*
 - (d) *plans relating to the management of personnel or the administration of the Kapawe'no First Nation that have not yet been implemented;*
 - (e) *the contents of draft legislation, of draft orders of Chief and Council; and*
 - (f) *information, including the proposed plans, policies or projects of the Kapawe'no First Nation, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.*
- 19(2) *Subsection 19(1) **does not** apply to information that,*
- (a) *has been in existence for twenty years or more,*
 - (b) *is a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of a person.*
- 20 *The Kapawe'no First Nation **may** refuse to disclose any recorded information relating to testing, or auditing procedures, or techniques or details of specific tests to be given, or audits to be conducted, if the disclosure would prejudice the use or results of particular tests or audits.*
- 21 *The Kapawe'no First Nation **may** refuse to disclose any recorded information which could reasonably be expected to result in damage to or interfere with the preservation, protection or conservation of,*
- (a) *fossil sites, natural sites or sites that have an anthropological or heritage value or cultural significance; or*



- b) *any rare, endangered, threatened or vulnerable life forms, including plants, vertebrates or invertebrates.*
- 22 *The Kapawe’no First Nation **may** refuse to disclose any recorded information,*
- (a) *that is subject to any type of privilege available at law, including solicitor-client privilege; or*
- (b) *that was prepared by or for the Kapawe’no First Nation in contemplation of and for the purpose of existing or expected proceedings in court or before an adjudicative body, regardless of whether it has been communicated to or from a lawyer.*
- 23 *The Kapawe’no First Nation **shall** refuse to disclose any recorded information which is restricted by or pursuant to any legislation to which the Kapawe’no First Nation must comply, including information in a law enforcement record if disclosure would be an offence under legislation.*
- 24 *The Kapawe’no First Nation **may** refuse to disclose any recorded information if it believes on reasonable grounds, that the information will be published or released to the public by the Kapawe’no First Nation within ninety days after the request is made, or within such further period of time as may be necessary for printing or translation.*
- 25 *The Kapawe’no First Nation **may** refuse to disclose any recorded information the disclosure of which could reasonably be expected to,*
- (a) *threaten anyone’s safety or mental or physical health, or*
- (b) *interfere with public safety.*
- 26(1) *Subject to subsection 26(2), the Kapawe’no First Nation **shall** refuse to disclose any personal information about an individual other than the applicant.*
- 26(2) *The Kapawe’no First Nation **may** disclose any personal information if,*
- (a) *the individual to whom it relates consents to the disclosure,*
- (b) *the information is publicly available, or*
- (c) *the disclosure is in accordance with s.35(P3/pg.25 - Disclosure).*
- 27 *The Kapawe’no First Nation **may** refuse to disclose personal information about the applicant, if in the opinion of a physician, a chartered psychologist or a psychiatrist, or any other appropriate expert depending on the circumstances of the case, the disclosure could reasonably be expected to result in immediate and grave harm to the applicant’s health or safety.*
- 28 *The Kapawe’no First Nation **may** refuse to disclose any personal information that has been provided in confidence, directly or indirectly, for purposes of determining the*



applicant's suitability, eligibility or qualifications for employment, or for the purpose of awarding a contract.

Discretionary Overrides to Exceptions to Disclosure (ss.29 and 30)

- 29(1) *The Kapawe'no First Nation **may** disclose any information described in s.14 to 28(P2/pg.14 - Exceptions to Disclosure) of this Code to its members or other parties if this is required by legislation or by other instruments that authorize or compel disclosure, or if Chief and Council are satisfied that this is required for the programs or activities of the Kapawe'no First Nation.*
- 29(2) *Subject to any legislative or contractual requirements, disclosures pursuant to subsection 29(1) **shall** be made by providing for examination of the recorded information, or portion thereof, and **shall** include a notice,*
- (a) *specifying the provisions of the Code pursuant to which the information is subject to protection;*
 - (b) *stating that the information must not be disclosed to any other party without the written consent of Chief and Council; and*
 - (c) *declaring that parties to whom the information is disclosed must be accountable for the information, and that the Kapawe'no First Nation may undertake action or remedies in response to any disclosure that has not been authorized pursuant to subsection 29(2)(b).*
- 30(1) *The Kapawe'no First Nation **may** disclose any information described in s.14 to 28(P2/pg.14 - Exceptions to Disclosure) of the Code, if the interest being protected therein is clearly outweighed by the public interest in disclosure as this relates to,*
- (a) *the health or safety of the public or a group of people,*
 - (b) *a risk of significant harm to the environment,*
 - (c) *improving competition or preventing undesirable trade practices; or*
 - (d) *any other reason, clearly in the public interest.*
- 30(2) *Before disclosing information under subsection 30(1), the Kapawe'no First Nation **shall** if practicable, notify any third party to whom the information relates.*
- 30(3) *If it is not practicable to comply with subsection 30(2), the Kapawe'no First Nation **shall** mail a notice of disclosure to the last known address of the third party.*



Part 3 -Protection of Privacy Provisions

Collection (s.31)

- 31(1) *No personal information **shall** be collected by the Kapawe'no First Nation unless,*
- (a) the collection is expressly authorized by or under legislation,*
 - (b) it is collected for the purpose of administering any law,*
 - (c) it is collected for the purposes of law enforcement, or*
 - (d) it relates directly to an operating program or activity of the Kapawe'no First Nation.*
- 31(2) *The Kapawe'no First Nation **shall** wherever possible, collect personal information directly from the individual to whom it relates except where,*
- (a) the individual consents to another method of collection;*
 - (b) legislation authorizes otherwise;*
 - (c) personal information may be disclosed to the Kapawe'no First Nation pursuant to federal or provincial privacy legislation;*
 - (d) the information is collected for the purpose of law enforcement;*
 - (e) the information is collected for the purpose of collecting a fine or a debt owed to the Kapawe'no First Nation;*
 - (f) the information is collected for use in the provision of legal services to the Kapawe'no First Nation;*
 - (g) the information is necessary,*
 - (i) to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Kapawe'no First Nation and is collected in the course of processing an application made by or on behalf of the individual that the information is about, or*
 - (ii) to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the Kapawe'no First Nation and is collected for that purpose,*
 - (h) the information is collected for the purpose of managing or administering personnel of the Kapawe'no First Nation, or*
 - (i) the information is collected for the purpose of assisting the Kapawe'no First Nation in researching or validating its claims, disputes or grievances.*



- 31(3) *Where the Kapawe'no First Nation collects personal information directly from the individual to whom it relates, it **shall** inform the individual of the purpose for which the information is being collected.*
- 31(4) *Subsections 31(2) and 31(3) **do not** apply where compliance therewith might,*
- (a) *result in the collection of inaccurate information, or*
 - (b) *defeat the purpose or prejudice the use for which information is collected.*

Accuracy (s.32)

- 32 *The Kapawe'no First Nation **shall** ensure that personal information that is used or disclosed to make a decision that directly affects the individual, is as accurate, up-to-date and complete as is reasonably possible.*

Retention (s.33)

- 33 *Personal information that has been used by the Kapawe'no First Nation to make a decision that directly affects the individual **shall** be retained by the Kapawe'no First Nation, for at least one year after using it, in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the information.*

Use (s. 34)

- 34(1) *Personal information **shall** only be used by the Kapawe'no First Nation for the purpose for which,*
- (a) *the information was obtained or compiled by the Kapawe'no First Nation or for a use consistent with that purpose;*
 - (b) *the information may be disclosed to employees, officers or representatives of the Kapawe'no First Nation under s.35(P3/pg.25 - Disclosure) of this Code; or*
 - (c) *the individual to whom the information relates has consented.*
- 34(2) *In subsection 34(1) the use of personal information is consistent with the purposes for which the information was obtained or compiled, if the use,*
- (a) *has a reasonable and direct connection to that purpose,
and*
 - (b) *is necessary for performing the activities of or for operating an authorized program of the Kapawe'no First Nation.*
- 34(3) *Personal information **shall** only be used to link information databases or match personal information in one information database with information in another, if an approval is given by Chief and Council.*



- 34(4) *If personal information is used by the Kapawe'no First Nation for a purpose that is not included in the publication required under subsection 53.1(P6/pg.38), the appropriate officer **shall**,*
- (a) *keep a record of the information and of its use, and*
 - (b) *ensure that the use is included in the next publication.*

Disclosure (ss.35 and 36)

35(1) *The Kapawe'no First Nation **shall not**, without the consent of the individual to whom it relates, disclose personal information except in accordance with this section.*

35(2) *The Kapawe'no First Nation **may** disclose personal information,*

- (a) *for the purpose for which the information was obtained or compiled by the Kapawe'no First Nation or for a use consistent with that purpose;*
- (b) *for any purpose in accordance with any legislation that authorizes its disclosure;*
- (c) *for the purpose of administering or enforcing Treaty #8;*
- (d) *for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information, or for the purpose of complying with rules of court relating to the production of information;*
- (e) *to an officer, employee or representative of the Kapawe'no First Nation, including the Chief or a member of Council if the information is necessary for the performance of their duties;*
- (f) *to a lawyer for use in legal proceedings involving the Kapawe'no First Nation;*
- (g) *to an investigative body, on the written request of the body, for the purpose of enforcing any law or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed;*
- (h) *under an agreement or arrangement between the Kapawe'no First Nation and the government of one of the other First Nations, an organization representing First Nations, the federal or provincial government, the government of a foreign state, an international organization of states, or an international organization established by the governments of states, or any institution of any such government or organization, for the purpose of administering or enforcing any law or carrying out a lawful investigation;*
- (i) *to the Chief or a member of Council of the Kapawe'no First Nation who has been requested, by the individual to whom the information relates, to assist in resolving a problem;*



- (j) *to officers, employees or other representatives of the Kapawe'no First Nation for audit purposes;*
- (k) *for the purpose of managing or administering personnel of the Kapawe'no First Nation;*
- (l) *to an archive for archival purposes;*
- (m) *to any person or body for research or statistical purposes, if the Kapawe'no First Nation,*
 - (i) *is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and*
 - (ii) *obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;*
- (n) *to one of the other First Nations or another government institution, or any representative thereof, for the purpose of researching or validating claims, disputes or grievances that are particular to First Nation people;*
- (o) *for the purpose of locating an individual in order to collect a debt owing to the Kapawe'no First Nation by that individual or make a payment owing to that individual by the Kapawe'no First Nation;*
- (p) *for the purpose of enforcing a legal right that the Kapawe'no First Nation has against any person;*
- (q) *for the purpose of determining an individual's suitability or eligibility for a program or benefit;*
- (r) *to the next of kin of a deceased individual where the Kapawe'no First Nation believes on reasonable grounds that disclosure of the deceased individual's personal information before the time specified in subsections 3(n) or 3(o)(P1/pg.6 – Definitions), would not constitute an unreasonable invasion of individual's privacy;*
- (s) *for the purpose of contacting the next of kin or a friend of an injured, ill or deceased individual, and*
- (t) *for any purpose where, the Kapawe'no First Nation believes on reasonable grounds that,*
 - (i) *the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or*
 - (ii) *disclosure would clearly benefit the individual to whom the information relates.*



- 35(3) *Only information that is reasonably required **may** be disclosed under subsection 35(2).*
- 35(4) *When the Kapawe'no First Nation considers disclosing personal information under subsection 35(2), it **shall** assess whether the disclosure would be an unreasonable invasion of the individual's privacy, by considering all the relevant circumstances including but not limited to, whether*
- (a) *the disclosure is desirable for the purpose of subjecting the activities of the Kapawe'no First Nation to scrutiny;*
 - (b) *the disclosure is likely to promote public health or safety or protection of the environment;*
 - (c) *the disclosure will assist in researching or validating the claims, disputes or grievances that are particular to Kapawe'no First Nations' people;*
 - (d) *the personal information is relevant to a fair determination of the applicant's rights,*
 - (e) *the disclosure may unfairly expose the individual to financial or other harm;*
 - (f) *the personal information has been provided, directly or indirectly, in confidence;*
 - (g) *the personal information is highly sensitive;*
 - (h) *the personal information is likely to be inaccurate or unreliable;*
 - (i) *the disclosure may unfairly damage the reputation of the individual; and*
 - (j) *the disclosure would be inconsistent with the purpose for which the personal information was obtained.*
- 36(1) *In subsection 35(2)(a) the disclosure of personal information is consistent with the purposes for which the information was obtained or compiled **if** the disclosure,*
- (a) *has a reasonable and direct connection to that purpose; and*
 - (b) *is necessary for performing the activities of or for operating an authorized program of the Kapawe'no First Nation.*
- 36(2) *Personal information **shall** only be disclosed, to link information databases or match personal information in one information database with information in another, if an approval is given by Chief and Council of Kapawe'no First Nation.*
- 36(3) *If personal information is disclosed by the Kapawe'no First Nation for a purpose that is not included in the publication required under subsection 53.1(P6/pg.38), the appropriate officer **shall***
- (a) *keep a record of the information that was disclosed and of the purpose for which it was disclosed, and*



- (b) *ensure that the purpose is included in the next publication.*

Correction and Annotation (s.37)

- 37(1) *An individual who believes there is an error or omission in his or her personal information is **entitled** to*
 - (a) *request correction of the personal information; and*
 - (b) *require that the Kapawe'no First Nation annotate or link the information with the requested correction, if it is not made.*

- 37(2) *The Kapawe'no First Nation **shall** give notice of the correction, annotation or linkage it has made to any person or body to whom that information has been disclosed, for the purpose of making a decision that directly affects the individual during the year before the correction was requested.*

- 37(3) *Where a correction to personal information is made pursuant to a request by an individual under subsection 37(1), the Kapawe'no First Nation **shall** within thirty days after receipt of the request,*
 - (a) *notify the individual that the correction has been made; and*
 - (b) *notify any person or body as required by subsection 37(2).*

- 37(4) *Where a request by an individual under subsection 37(1) is refused in whole or in part, the Kapawe'no First Nation **shall** within thirty days after the receipt of the request,*
 - (a) *attach a notation to the personal information reflecting that a correction was requested but was refused in whole or in part;*
 - (b) *notify the individual,*
 - (i) *that the request for correction has been refused in whole or in part and set out the reasons for the refusal, and*
 - (ii) *that the notation or linkage required under subsection 37(4)(a) has been attached to the personal information; and*
 - (c) *notify any person or body as required by subsection 37(2).*

Part 4 -Third Party Intervention

- 38(1) *Where the Kapawe'no First Nation is considering giving access to recorded information that may be information described in ss.18(1)(P2/pg.14 - Exceptions to Disclosure), or disclosing personal information under circumstances that might be deemed an unreasonable invasion of privacy according to subsection 35(4)(P3/pg.25 - Disclosure), it **shall** give written notice to the third party in accordance with subsection 38(3) if the third party can reasonably be located.*



- 38(2) A notice under subsection 38(1) **shall**,
- (a) state that a request has been made for access to information that might be information described in subsection 18(1)(Exceptions to Disclosure), or is personal information that the Kapawe'no First Nation is considering disclosing under s.35(Disclosure);
 - (b) include a copy of the information in question or describe the contents of the information that, as the case may be, belongs to, was supplied by or relates to the third party to whom the notice is given; and
 - (c) state that, within 21 days after the notice is given, the third party may, in writing, consent to the disclosure or make representations to the Kapawe'no First Nation explaining why the information should not be disclosed.
- 38(3) When notice is given under subsection 38(1), the Kapawe'no First Nation **shall** also give the applicant a notice stating that,
- (a) the requested information may be information described in subsection 18(1), or is personal information that the Kapawe'no First Nation is considering disclosing under s.35(Disclosure);
 - (b) the third party is being given an opportunity to make representations concerning disclosure; and
 - (c) a decision will be made within 35 days after the day the notice is given under subsection 38(1).
- 39(1) Within 35 days after notice is given pursuant to subsection 38(1), the Kapawe'no First Nation **shall** decide whether or not to give access to the information or to part thereof, but no decision may be made before the earlier of,
- (a) 21 days after the day notice is given, and
 - (b) the day a response is received from the third party.
- 39(2) On reaching a decision under subsection 39(1) the Kapawe'no First Nation **shall** give written notice of the decision, including reasons for the decision, to the applicant and the third party and if subsection 39(3) does not apply, the Kapawe'no First Nation **shall** respond to the applicant in accordance with ss.9 to 13(P2/pg.11 - Access).
- 39(3) If the Kapawe'no First Nation decides to give access to all or part of the information and the third party has objected to such disclosure, the notice under subsection 39(2) **shall** state that the applicant will be given access unless,
- (a) the third party provides further representations in writing, within 21 days after the notice is given, to the Kapawe'no First Nation explaining why the information should not be disclosed; or



- (b) *the third party makes a complaint under s.45(P5/pg.34 - Reviews) within 21 days after the notice is given.*
- 39(4) *If the third party provides further representations pursuant to the notice under subsections 39(2) and (3), the Kapawe’no First Nation **shall**, within 35 days after notice is given pursuant to subsection 39(2) and (3), decide whether or not to give access to the information or to part thereof, but no decision may be made before the earlier of,*
- (a) *21 days after the day notice is given, and*
- (b) *the day a response is received from the third party.*
- 39(5) *On reaching a decision under subsection 39(4), the Kapawe’no First Nation **shall**,*
- (a) *give written notice of the decision, including reasons for the decision, to the applicant and the third party, and to the Chief and Council if the third party has made a complaint under subsection 39(3)(b); and*
- (b) *respond to the applicant in accordance with ss.9 to 13(P2/pg.11 - Access), if the third party has not made a complaint under subsection 39(3)(b), and if the circumstances described in subsection 52(1)(P6/pg.38 - General Provisions) do not apply.*
- 40 *If the applicant asks for a review under s.45(P5/pg.34 - Reviews), the Kapawe’no First Nation **shall**,*
- (a) *give written notice to the third party of the review being conducted, and*
- (b) *within 14 days after the review is completed,*
- (i) *decide whether or not to give access to the information or to part thereof,*
- (ii) *give written notice of the decision, including reasons for the decision, to the applicant and the third party, and*
- (iii) *respond to the applicant in accordance with ss.9 to 13(Access).*
- 41 *The Kapawe’no First Nation **may** waive the requirement that the third party provide representations in writing, in which case they may be made orally.*
- 42 *The Kapawe’no First Nation **may** extend the time limits set out in this section subject to the time limit established pursuant to subsection 10(1)(Access).*
- 43 *A third party who consents to the giving of access to recorded information described in subsection 18(1)(P2/pg.14 - Exceptions to Disclosure), or to the disclosure of his or her personal information, is deemed to have waived the requirement for notice.*



Part 5 -Reviews and Reports

- 44(1) *The Kapawe'no First Nation shall prepare for submission to its members an annual report on the administration of this Code during each financial year(or other period).*
- 44(2) *Every report prepared under subsection 44(1) shall be submitted to the members, by Chief and Council, within three months after the financial year (or other period) in respect of which it is made.*
- 44(3) *The annual report shall state:*
- (a) *the number of requests received from groupings of applicants, including but not restricted to, from members and from the media;*
 - (b) *the nature of the information requested by each grouping, and of the information that was disclosed or protected;*
 - (c) *the uses or purposes for which personal information was disclosed to other parties than the individuals to whom the information pertains;*
 - (d) *the purposes for which personal information was used or disclosed to link, or to match personal information in one information database with information in another; and*
 - (e) *any other matter that Chief and Council deem appropriate.*
- 45(1) *Subject to this Code, the Chief and Council shall receive and investigate complaints in respect of any matter relating to, requesting or obtaining access to recorded information under this Code or in respect of any other matter relating to correction, collection, retention, disposal, use or disclosure of personal information under the control of the Kapawe'no First Nation.*
- 45(2) *A complaint under this Code shall be made to the Chief and Council in writing unless the Chief and Council authorizes otherwise and shall, where the complaint relates to a request for access to recorded information, be made within one year from the time when the request for the information in respect of which the complaint is made, was received.*
- 45(3) *Before commencing an investigation of a complaint under this Code, the appropriate officer shall notify the Chief and Council, of the intention to carry out the investigation and of the substance of the complaint.*
- 45(4) *Where the Kapawe'no First Nation refuses to disclose recorded information requested under this Code or a part thereof, and a complaint is made pursuant to this section of the Code, the appropriate officer shall forthwith advise the Chief and Council of any third party that was notified under ss.38(1)(P4/pg.31 - Third Party Intervention) in respect of the request or would have been notified under that section if the Kapawe'no First Nation had intended to disclose the recorded information or part thereof.*
- 45(5) *In the course of an investigation of a complaint under this Code by the Chief and Council, a reasonable opportunity to make representations shall be given to,*



- (a) *the party who made the complaint,*
 - (b) *the appropriate officer, and*
 - (c) *the third party, if the third party can reasonably be located.*
- 45(6) *No one is entitled, as of right to be present during, to have access to or to comment on representations made to the Chief and Council by any other party.*
- 45(7) *Except as specified in this Code, the Chief and Council **shall not** disclose any information obtained during the performance of the Chief and Council's duties and functions under this Code.*
- 45(8) *The Chief and Council **may** disclose information that in the opinion of the appropriate officer is necessary to,*
- (a) *carry out an investigation under this Code, or*
 - (b) *establish the grounds for findings and recommendations under s.47(P5/pg.36 - Reviews).*
- 45(9) *The appropriate officer **shall** disclose to the Chief and Council information relating to the commission of an offence against any law of the Kapawe'no First Nation, or any federal or provincial law, if there is evidence thereof.*
- 46 *The Chief and Council has, in relation to the carrying out of the investigation of any complaint under this Code, the **power**,*
- (a) *to compel any employee or officer of the Kapawe'no First Nation, or any other representative of the Kapawe'no First Nation, to give oral or written evidence and to produce such documents and things as the Chief and Council deems requisite to the full investigation and consideration of the complaint;*
 - (b) *to receive and accept such evidence and other information, as the Chief and Council considers appropriate;*
 - (c) *to enter any premises occupied by the Kapawe'no First Nation on satisfying any security requirements relating to the premises;*
 - (d) *to converse in private with any person in any premises entered pursuant to subsection 46(c) and otherwise carry out therein such inquiries within the authority of the Chief and Council under this Code as they see fit; and*
 - (e) *to examine books or other recorded information found in any premises entered pursuant to subsection 46(c) containing any matter relevant to the investigation.*
- 47 *If, on investigating a complaint under this Code, the Chief and Council finds that the complaint is well founded, the Chief and Council **shall** provide the appropriate officer with a report containing,*



- (a) *the findings of the investigation and any recommendations that the Chief and Council considers appropriate; and*
 - (b) *where recommendations are made, a request that, within a reasonable period of time, Chief and Council notify the appropriate officer of any action taken or proposed to be taken as a result of the recommendations contained in the report.*
- 48(1) *Where the Chief and Council makes a recommendation under s.47, the Chief and Council **shall** decide by quorum whether any action is required as a result of the recommendations, and **shall** notify the appropriate officer, the party who made the complaint, and any party who made representations pursuant to subsection 48(2)(c), of its decision.*
- 48(2) *Before making a decision under subsection 48(1), a reasonable opportunity to make representations to the Chief and Council **shall** be given to,*
- (a) *the party who made the complaint,*
 - (b) *the appropriate officer, and*
 - (c) *the third party, where the Chief and Council has recommended under s.47 that recorded information or a part thereof be disclosed, that contains or that the Chief and Council have reason to believe might contain, information of the nature describe in subsection 18(1)(P2/pg.14 - Exceptions to Disclosure), if the third party can reasonably be located .*

Part 6- General Provisions

- 49 *If a provision of this Code is inconsistent or in conflict with a provision of another code, policy or rule, the provision of this Code prevails, unless the other code, policy or rule is a by-law, a Band Council Resolution, or a motion of Chief and Council.*
- 50 *The Kapawe'no First Nation **shall** in relation to all information subject to protection under this Code, including personal information, make reasonable security arrangements against such risks as accidental loss or alteration, and unauthorized access, collection, use, disclosure, disposal or destruction.*
- 51(1) *The Kapawe'no First Nation **shall** appoint one or more officers or employees to exercise or perform the powers, duties or functions necessary for the implementation and application of this Code.*
- 51(2) *The officers or employees appointed pursuant to subsection 51(1) **may** be paid such remuneration and expenses as may be fixed by the Chief and Council of Kapawe'no First Nation.*
- 52(1) *If litigation is undertaken regarding any matter related to this Code, or if the appropriate officer appointed pursuant to subsection 51(1) has any reason to believe a person or body is contemplating litigation regarding any matter related to this Code, then this situation **shall** immediately be brought to the attention of Chief and Council and of the Kapawe'no First Nation's lawyer.*



- 52(2) *If litigation is undertaken regarding a proposed disclosure of recorded information under this Code, this recorded information **shall not** be disclosed until the litigation is completed, and the applicant **shall** be notified that the response is pending litigation.*
- 53(1) *The Kapawe'no First Nation **shall** prepare, maintain and make available to members,*
- (a) *a list of the general classes or types of recorded information including personal information, prepared by or in the custody or control of the Kapawe'no First Nation, to facilitate the exercise of the right of access under this Code;*
 - (b) *a description of the categories of individuals to whom the personal information pertains, of the purposes for which the personal information was collected or compiled, and of the purposes for which it is used or disclosed; and*
 - (c) *the title, business telephone number and business address of the person to whom a request under this Code must be made.*
- 53(2) *The Kapawe'no First Nation **shall** publish and make available to members, at intervals of 2 years or less, any amendment of information referred to in subsection 53(1).*
- 54 *Following any review of this Code or portions thereof, conducted by or on behalf of Chief and Council, or recommendations made by an appropriate officer, Chief and Council **shall** examine the advisability of maintaining this Code in force as it stands, or, if the need arises of amending it, **shall** hear the representations of interested parties.*

Part 7 -Fees

- 55(1) *Where an applicant is required to pay a fee for services, the fee is payable **in accordance with** ss.55 to 64, of this Code.*
- 55(2) *The Kapawe'no First Nation **may** waive the requirement to pay a fee or part thereof under this Code, or may refund a fee or part thereof.*
- 56 *Where the request is for **access to recorded information** that is not personal information of the applicant,*
- (a) *when a non-continuing request is made, the applicant is required to pay an **initial fee** of \$5.00(member) or \$10.00 (non-member); or*
 - (c) *when a continuing request is made, the applicant is required to pay an **initial fee** of \$5.00(member) or \$10.00 (non-member);*
 - (d) *processing of a request **shall not** commence until the initial fee has been paid;*
 - (d) ***in addition** to the initial fee, the following fees may be charged, but a fee may not be charged for the time spent in reviewing the recorded information,*
 - (i) *for locating and retrieving recorded information
\$6.00 per hr.*



- (ii) *for preparing and handling recorded information for disclosure \$6.00 per hr.*
- (iii) *for supervising the examination of recorded information \$6.00 per hr.*
- (iv) *for shipping recorded information -actual amount incurred by the Kapawe'no First Nation.*
- (v) *for copying recorded information:*
 - *photocopies, hard copy, laser print and computer printouts @ \$1.00 per page*
 - *floppy disks or CDs @ \$10.00 per disk*
 - *any other media not listed above –actual cost to Kapawe'no First Nation.*

57 *Where the request is for **access to personal information** of the applicant, only the copying fees prescribed in paragraph 56(d)(v) may be charged.*

58 *An estimate provided under subsection 13(2)(Access), **shall** set out:*

- (a) *the time and cost required,*
 - (i) *to search, locate and retrieve the recorded information;*
 - (ii) *to prepare the recorded information for disclosure;*
 - (iii) *the cost of copying the recorded information;*
 - (iv) *the cost of computer time involved in locating and copying recorded information or, if necessary, re-programming to create a new record;*
 - (v) *the cost of supervising an applicant who wishes to examine the original recorded information, when applicable;*
 - (vi) *the cost of shipping the recorded information; and*
- (b) *a notice that the applicant has up to 14 days to indicate if the fee estimate is accepted or to modify the request to change the amount of fees assessed.*

59 *An estimate for access to the personal information of the applicant need only include,*

- (a) *the time and cost of copying;*
- (b) *a notice that the applicant has up to 14 days to indicate if the fee estimate is accepted or to modify the request to change the amount of fees assessed; and*
- (c) *the cost of shipping the personal information.*



- 60 *In the case of a continuing request, the estimate is to include the total fees payable over the course of the continuing request.*
- 61 *Processing of a request ceases once a notice of estimate has been forwarded to an applicant and recommences immediately on the receipt of an agreement to pay the fee and the receipt of at least 50% of any estimated fee.*
- 62 *The balance of any fee owing is payable at the time the information is delivered to the applicant.*
- 63 *Fees, other than an initial fee, or any part of those fees shall be refunded if the amount paid is higher than the actual fees required to be paid.*
- 64 *In the case of a continuing request, the portion of the estimate applicable to each delivery of the request shall be paid at the time of delivery, and is to be used to calculate any required payment.*

Part 8- Representatives

- 65 *The rights or actions provided for under the Code may be exercised or performed,*
- (a) on behalf of a minor or an incompetent person, by a person authorized to administer the affairs or estate of that person;*
 - (b) on behalf of a deceased person, by a person authorized to administer the estate of that person, but only for the purpose of such administration; and*
 - (c) on behalf of any other individual, by any person authorized in writing, or by other appropriate means, to do so by the individual.*



Informal Request For Information

1. General Information:

Requester's Name: (Please print) _____
Requester's Address:(Street) _____
(Place) _____ (PC) _____
Requester's Phone Number: _____
Fax: _____ Email: _____

2. Requested subjects: Specific nature of research, including approximate date of when the information requested had been made (this is to make it easier to find).

3. I have obtained valid authorization to access files by either:

Band Council Resolution (BCR) Letter of Authorization None

4. Waiver: The Kapawe'no First Nation may waive the requirement that third-party request be made in writing, in which case they may be made orally.

5. Waiver: The Kapawe'no First Nation may waive the fee requirement or part thereof under this code.

6. Time frame for requests: all access requests will be completed within 30 days after the request has been received, unless otherwise specified.

7. Fees: No requests will be processed until all fees or deposits have been paid according to this code.

8. Notice: The Kapawe'no First Nation requires the signed acknowledgment from the applicant that the information being disclosed will not be disclosed to any other party without the written consent of the Chief and Council.

Print Name: _____

Signature: _____ Date: _____

Requester's signature: _____ Date: _____

Band Administrator and/or Appropriate ATIP Officer

Print name: _____

Signature: _____ Date: _____

