

Guide to Privacy under the *ATIPPA, 2015*

The Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015) regulates the manner in which personal information is collected, used, and disclosed by Public Bodies. Further, it states that each Public Bodies shall take reasonable security measures to protect the personal information in its custody or control. When personal information is no longer needed, Public Bodies must ensure that the information is securely destroyed. The *ATIPPA, 2015* also gives individuals the right to access their personal information in the control or custody of Public Bodies, and the right to request correction of their personal where it is factually inaccurate.

You have the right to make a complaint to the Office of the Information and Privacy Commissioner (OIPC) if you believe a Public Body is not complying with its obligations under the *ATIPPA, 2015*.

The privacy of your personal health information falls under the *Personal Health Information Act* (See <http://www.oipc.nl.ca/phia.htm> for more information).

What are Public Bodies?

Public Bodies include all provincial government departments, agencies, and Crown corporations, the House of Assembly, Memorial University, College of the North Atlantic, regional health authorities, school districts, municipalities and municipally-owned or created corporations.

Private businesses are not public bodies and are therefore not subject to the *ATIPPA, 2015*. Private businesses are subject to a federal law, the *Personal Information Protection and Electronic Documents Act (PIPEDA)* in relation to the personal information of their customers (but not employees). The federal Privacy Commissioner (<https://www.priv.gc.ca/>) is responsible for overseeing compliance with *PIPEDA*.

What personal information can be collected?

Public Bodies can only collect your personal information if the collection is expressly authorized by law, is for the purposes of law enforcement or if it is directly related to and necessary for an operating program or activity of the Public Body. Generally, personal information must be collected directly from the individual, however in certain circumstances, collection by other means is allowed.

How is your personal information used?

A Public Body may only use your personal information for the purpose for which it was collected or a consistent purpose, or if you have consented to its use or for a purpose set out in sections 68-71 of the *ATIPPA, 2015*.

Public Bodies have an obligation to make reasonable efforts to ensure that the personal information they collect is accurate and complete where the information will be used to make a decision that directly affects the individual, and in these circumstances, the personal information used to make that decision must be retained for at least one year. The *ATIPPA, 2015* does not contain any other direction with respect to retention or destruction of personal information in a Public Body's possession, however, some public bodies may have specific requirements for this under the *Management of Information Act* (<http://www.assembly.nl.ca/Legislation/sr/statutes/m01-01.htm>)

How is your personal information protected?

Public bodies must take reasonable steps to ensure the personal information in its custody or control is protected against theft, loss and unauthorized disclosure, copying or modification. Personal information must also be retained, transferred and disposed of in a secure manner.

Public Bodies must notify individuals that their personal information has been stolen, lost, destroyed, or improperly accessed or disclosed, if the Public Body reasonably believes that there is a risk of significant harm to the individual who is the subject of the information.

When can your personal information be disclosed?

There are more than 20 situations set out in the *ATIPPA, 2015* when personal information can be disclosed by a Public Body. A full list can be found in section 68 of the *ATIPPA, 2015*, but some of the more common situations are:

- To comply with another law, including *ATIPPA, 2015*;
- If you consent to the disclosure;
- For the purpose for which it was obtained or compiled or a consistent purpose (a consistent purpose is one which has a reasonable and direct connection to the original purpose and is necessary for performing the legal duties or operating a legally authorized program of the Public Body);
- For various investigation purposes and legal proceedings;
- Where the disclosure is not an unreasonable invasion of privacy;
- Where there are compelling health or safety reasons.

In all circumstances the information disclosed must be the minimum amount necessary to accomplish the purpose for which it was disclosed.

How do you file a privacy complaint?

If you believe on reasonable grounds that your personal information has been collected, used or disclosed by a Public Body contrary to the *ATIPPA, 2015*, you may file a privacy complaint with the Commissioner's Office. Someone else may also file the privacy complaint on your behalf with your

consent. Privacy Complaint forms can be found at http://www.oipc.nl.ca/forms_atippa.htm. There is no cost to file a Privacy Complaint.

The Commissioner also has the ability to commence a privacy investigation without a complaint where he believes that personal information has been improperly collected, used or disclosed.

The Commissioner may resolve the complaint informally or may complete a formal investigation and issue a report with recommendations. The Commissioner may recommend that the improper collection, use or disclosure cease, that information policies or practices be stopped or modified and he may also recommend that improperly collected information be destroyed. Within 10 business days of receiving the Commissioner's recommendation, the Public Body must decide whether they will comply with the recommendation. If the Public Body does not want to comply with the recommendation, it must go to court to seek a declaration that it does not have to comply with the Commissioner's recommendation. If a Public Body agrees with the recommendations but fails to implement them or fails to respond to the Commissioner's Report, the Commissioner may file certain of his recommendations (such as a recommendation to cease collection, use or disclosure of information) with the Supreme Court, Trial Division as an order of the court.

What personal information do Public Bodies have about me?

If you believe a Public Body has your personal information in a record, you have the right to request access to it. For more information on accessing records, please see our Guide to Accessing Information: <http://www.oipc.nl.ca/pdfs/GuideToAccessingInformationUndertheATIPPA.pdf>.

How can you have errors corrected?

If you feel there is an error in your personal information, you may request the head of the Public Body that has the information in its custody or control to correct the information. There is no cost for such a request.

Where no correction is made in response to the request, the Public Body must annotate the information with the correction that was requested but not made. Where personal information is corrected or annotated the head of the Public Body must notify any Public Body or Third Party to whom the information was disclosed within a one year period before the correction was requested.

What if your request is refused?

If your request for correction is refused or partially refused, you may make a complaint to the OIPC or appeal directly to the Trial Division within 15 days of being notified of the decision of the Public Body.

If we receive a complaint, the OIPC will review the complaint to determine if the Public Body complied with the legislation. The OIPC has extensive powers to investigate and can require any document be produced for examination. The OIPC has a total of 65 business days to complete an investigation (see Guide to Accessing Information under the *ATIPPA*, 2015: <http://www.oipc.nl.ca/pdfs/GuideToAccessingInformationUndertheATIPPA.pdf>).

If the Complaint cannot be resolved informally within 30 business days, it moves to the formal investigation stage, which culminates in a Commissioner's Report setting out the Commissioner's findings and recommendations. If the Public Body does not want to follow the Commissioner's recommendations, it has 10 business days to apply to the Court for a declaration that the Public Body does not have to comply with the recommendations. If a Public Body agrees with the recommendations but fails to implement them or fails to respond to the Commissioner's Report, the Commissioner may file a recommendation to make a correction to personal information) with the Supreme Court, Trial Division as an order of the court. For more information on the complaint process see <http://www.oipc.nl.ca/accesstoinfo.htm>