

## **A Guide to Accessing Information under the ATIPPA, 2015**

### **What are your rights?**

*The Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)* gives individuals a right of access to all records that are in the custody or control of Public Bodies. This right is not absolute – there are limited and specific exceptions, as explained below. Records can be in any form, including paper, electronic, photographs, and audio recordings. 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.

The *ATIPPA, 2015* also protects the privacy of personal information held by Public Bodies, and regulates the way in which personal information is collected, used, disclosed and protected by Public Bodies. It also provides a right for individuals to obtain access to their own personal information and to ask for correction of personal information where the information is factually incorrect. Please see our Guide to Privacy for more information on this topic:

<http://www.oipc.nl.ca/pdfs/GuideToPrivacyUndertheATIPPA.pdf>

If you have submitted a request to a Public Body for access to a record or for correction of your personal information and you are not satisfied with the response, you may file a complaint with the Office of the Information and Privacy Commissioner (OIPC).

### **What information is available?**

As noted above, the *ATIPPA, 2015* applies to all records in the custody or control of Public Bodies. The purpose of the *ATIPPA, 2015* is to facilitate democracy by:

- ensuring citizens have the information required to participate meaningfully in the democratic process;
- increasing transparency and accountability of Public Bodies, elected officials, and employees of Public Bodies;
- protecting the privacy of individuals with respect to the personal information that Public Bodies hold about them.

### **What information can be withheld?**

Access to records must be given unless the *ATIPPA, 2015* specifically allows or requires the information to be withheld.

The *ATIPPA, 2015* contains four mandatory exceptions, which means that if information falls under one of these exceptions, it must be withheld by a public body. The mandatory exceptions include:

- third party business information;
- personal information of other people where that information would be an unreasonable invasion of privacy. Some personal information, as set out in the *ATIPPA, 2015*, is deemed to not be an unreasonable invasion of privacy and therefore can be released;
- House of Assembly service and statutory office records; and
- Cabinet records, but with a twist. The clerk of the Executive Council may release such a record in his or her sole discretion if he or she believes that the public interest in disclosure outweighs the reason for the exception.

The other exceptions set out in the *ATIPPA, 2015* are discretionary exceptions. This means that even if information falls into one of these exceptions, the Public Body can use its discretion to release it anyway (for example, if the harm the exception was designed to protect against is not present in a particular case). In addition, most discretionary exceptions are subject to the Public Interest Override as set out in section 9 of *ATIPPA, 2015*. This means that even if the Public Body decides one of these discretionary exceptions applies to requested information, there is still a chance it will have to be released, if it can be demonstrated that the public interest in disclosing such information outweighs the reason for withholding it. Please see our guidance document on the Public Interest Override at <http://www.oipc.nl.ca/atippaguidancedocuments.htm>.

Discretionary exceptions involve the following types of information:

- Local public body confidences;
- Policy advice and recommendations;
- Legal advice;
- Disclosure harmful to law enforcement\*;
- Confidential evaluations;
- Information from a workplace investigation\*;
- Disclosure harmful to intergovernmental relations or negotiations;
- Disclosure harmful to the financial or economic interests of a public body;
- Disclosure harmful to conservation;
- Disclosure harmful to individual or public safety\*;
- Disclosure harmful to labour relations interest of public body as employer.

\*not subject to the public interest override

### **How do I request information?**

You may not need to make a formal request under the *ATIPPA, 2015* in order to obtain the information. Some information is available through routine disclosure. Contact the Access Coordinator for the Public Body you believe might hold the information to ask if an access request is needed. A list of Public Body Coordinators can be found here:

<http://www.atipp.gov.nl.ca/info/coordinators.html>

If an access request is required, you can make a formal request for information using the process described here: <http://www.atipp.gov.nl.ca/info/accessrequestform.html>. You must submit your request to the Public Body you believe has the information you are seeking. If that Public Body does not have the information, it may transfer the request to the Public Body that does have custody and control of the records in accordance with section 14 of the *ATIPPA, 2015*. A call to the coordinator of the Public Body (who is familiar with the records held by the Public Body) will assist you in making a request to the proper Public Body.

### **Is there a cost?**

There is no cost to make an access to information request, however, you may be charged a processing fee if the time required to respond to your request is in excess of 10 hours for a municipality or 15 hours for all other Public Bodies. There may also be a charge for photocopying. The Public body must provide you with a cost estimate if they intend to charge you a fee.

If you disagree with the cost estimate, you may file a complaint with the OIPC.

### **When I can I expect a response?**

Within 10 business days, the Public Body must provide an advisory response to inform an applicant of the status of the request. Within 20 business days, the Public Body must provide a final response. However, in some circumstances the Public Body may request from the Commissioner an extension to this time period. For more information about when a time extension may be granted please see our guidance document about time extensions at:

<http://www.oipc.nl.ca/atippguidancedocuments.htm>

### **What if my request is refused in full or in part?**

If your request is refused in full or in part or not answered in time, you may make a complaint to this Office. The OIPC will review the decision of the Public Body to determine if the Public Body complied with the *ATIPPA, 2015*. Our goal is to help you get all of the information you are entitled to in accordance with the *ATIPPA, 2015*. Complaint Forms can be found at: [http://www.oipc.nl.ca/forms\\_atippa.htm](http://www.oipc.nl.ca/forms_atippa.htm). There is no cost to file a complaint with the OIPC.

The OIPC has extensive powers to investigate and can require any document to be produced to the OIPC for examination. The OIPC has a total of 65 business days to complete an investigation (either through informal resolution or a Commissioner's Report). 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 certain of his recommendations (such as a recommendation to disclose 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>

An Applicant who is unsatisfied with the decision of the Public Body in response to the Commissioner's Report may also file an appeal with the Trial Division.

For more information on the Commissioner's powers and duties, please see:  
[http://www.oipc.nl.ca/atippa\\_commpowersduties.htm](http://www.oipc.nl.ca/atippa_commpowersduties.htm)

### **Appeals to the Supreme Court, Trial Division**

You may also appeal the decision of the Public Body directly to the trial division, without first making a complaint to the OIPC. This must be done within 15 days of receiving the final response of the Public Body to your access request.