

# Designating the Head of a Local Public Body

## Overview

Section 2(j) of the [Access to Information and Protection of Privacy Act, 2015](#) (“ATIPPA, 2015”) defines “head” as follows:

- (2)(j) "head", in relation to a public body, means
- (i) in the case of a department, the minister who presides over it,
  - (ii) in the case of a corporation, its chief executive officer,
  - (iii) in the case of an unincorporated body, the minister appointed under the Executive Council Act to administer the Act under which the body is established, or the minister who is otherwise responsible for the body,
  - (iv) in the case of the House of Assembly the Speaker and in the case of the statutory offices as defined in the House of Assembly Accountability, Integrity and Administration Act, the applicable officer of each statutory office, or
  - (v) in another case, the person or group of persons designated under section 109 or in the regulations as the head of the public body;

Section 109 of the ATIPPA, 2015 speaks specifically to the designation of a head by a local public body:

109. (1) A local public body shall, by by-law, resolution or other instrument, designate a person or group of persons as the head of the local public body for the purpose of this Act, and once designated, the local public body shall advise the minister responsible for this Act of the designation.
- (2) A local government body or group of local government bodies shall
- (a) by by-law, resolution or other instrument, designate a person or group of persons, for the purpose of this Act, as the head of an unincorporated entity owned by or created for the local government body or group of local government bodies; and
  - (b) advise the minister responsible for this Act of the designation.

The definition of “local public body” as set out in the Act includes: an educational body; a health care body, and a local government body (i.e. a municipality).

## Role of the Head of a Public Body

The ATIPPA, 2015 contemplates that all actions and decisions of a public body emanate from the head of the public body (the “Head”). The responsibilities of the Head include, but are not limited to:



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- ensuring the public body takes appropriate steps to protect the anonymity of applicants;
- making decisions and responding to access to information, correction of information requests, and privacy complaints;
- ensuring the public body takes appropriate steps to protect the personal information it collects, uses and discloses;
- responding to Commissioner's Reports;
- taking court action in response to Commissioner's Reports; and
- designating the ATIPP Coordinator for the public body.

The Act does not require the Head to be on the staff of the relevant public body. Rather, the Head may be staff, board member(s) or elected official(s).

### Considerations When Designating a Group of Individuals as the Head

While the Act contemplates the possibility of a group of persons acting as the Head of a local public body, prior to designating the responsibilities to more than one individual, local public bodies should consider the implications of such a choice.

By designating more than one individual as the Head, those individuals will be required to act in unison when discharging the responsibilities of the Head. This will require all individuals designated as the Head to decide upon a quorum for all decisions and to establish that quorum when making decisions and issuing responses to access to information requests, correction of personal information requests, privacy complaints, and Commissioner's Reports. A quorum will also be required when making decisions in relation to policies and procedures relating to the personal information collected, used and disclosed by the public body; and when designating the ATIPP Coordinator for the public body. Local public bodies should also be aware that the designation of a group of people as the Head may present additional conflict of interest situations. Furthermore, as the Act imposes a number of short timeframes for some important decisions, issues may arise if all members of the group designated as the Head cannot come together in the relevant timeframe to take the necessary action.

### Considerations When Designating an Individual as the Head

Local public bodies should also give consideration, when designating an individual as the Head, that except in extremely limited circumstances where the local public body has limited resources and staff, the Head and the ATIPP Coordinator should not be the same individual. Allowing the same individual to be both the Head and the ATIPP Coordinator gives rise to concerns surrounding the possibility of the individual focusing on the identity of the requester rather than the merit of the request. Wherever possible, local public bodies should make the role of the Head and the ATIPP Coordinator distinct by employing two different individuals in those positions.

Local public bodies must also be mindful that, unlike the Head, the ATIPPA, 2015 requires that the Coordinator be staff of the public body.