



ABOVE BOARD

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Contact Information

Office of the Information
and Privacy Commissioner

3rd Floor, 2 Canada Drive
Sir Brian Dunfield Building
P.O. Box 13004, Station A
St. John's, NL A1B 3V8

Telephone:

709-729-6309

Fax:

709-729-6500

Toll Free in Newfoundland
and Labrador:

1-877-729-6309

Email:

commissioner@oipc.nl.ca

www.oipc.nl.ca

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Processing Access Requests During Covid-19 Pandemic

The following is an important message for all public bodies regarding compliance with the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*”) during the ongoing pandemic. In particular, this guidance addresses the process of requesting an extension of time to respond to an access request and represents an incremental change from the approach announced by the Office of the Information and Privacy Commissioner (“OIPC”) in our [March 18 news release](#) and in communications sent to public bodies when normal operations were initially suspended.

It is now clear that many public bodies have been adapting their operations to the extent possible to adjust to the reality that the suspension of normal operations will likely continue for the medium term. Many public bodies, including the OIPC itself, are processing access requests as best they can with staff working remotely.

To all those public bodies that are already making best efforts to uphold access to information rights during this challenging time, we thank you for your dedication and commitment. Any public bodies which have suspended their access to information processes and have not yet explored the feasibility of operationalizing them, we ask that you now begin to do so to the extent possible in order to restore the right of access where feasible.

We understand that most public bodies will continue to face significant limitations on their ability to respond to ATIPP requests, and with this revised guidance the Office of the Information and Privacy Commissioner assures that it will continue to acknowledge and accommodate that reality in its approach to requests for time extensions from public bodies.

Our guidance on March 12 indicated that we would be employing an approach similar to that used during the State of Emergency (“snowmageddon”) earlier

in the year. We are now about one month into the shutdown so we are revising our guidance on the process for requesting extensions, as public bodies continue to explore alternative ways to deliver services to adapt to the pandemic.

As of April 22, we are now requesting the following of all public bodies.

1. When making a request for an extension, please include the Public Body Number, the due date and the wording of the request. We may request further information about the barriers your public body is facing in responding to the request. If any such inquiries are made it will be for the purpose of better understanding and accommodating any unique challenges that particular public bodies may be facing and providing advice and support where practicable.
2. If you were planning to make your extension applications once your Public Body resumed normal activities, we ask that you make reasonable efforts to submit your extension requests as soon as possible. If you are completely unable to receive or gain access to newly received ATIPP requests, please advise this Office.
3. Please respond to any access requests that can be responded to with available resources, or if there is a part of a request you can fulfill during the shutdown, please contact the Applicant and advise them of same. If they are not willing to amend their request to reflect limitations on your ability to search and retrieve records during the shutdown, if possible provide what records you can, and seek an extension only on the inaccessible portions of the request.
4. We ask any Public Bodies that have not already done so, to begin discussions about how they can start to improve their ability to respond to access requests during the shutdown. This may include such steps as equipping ATIPP Coordinators for remote working, if they are not already so equipped, and remote installation of redaction software. We understand this will be challenging, and may not be possible for all Public Bodies, but Public Bodies are asked to make best efforts so that the important public right can be operationalized to the extent reasonably possible under the circumstances.

The pandemic is clearly a situation that is not going to be resolved any time soon, so let's work together to try and make the best of the circumstances. We understand and appreciate that this is a stressful time for all, and we will continue to do our best to find the right balance between supporting access to information rights while accommodating the very real challenges faced by public bodies during this pandemic.

Reminders and Updates

Time Extensions

When a public body has been granted a time extension by this Office, they are required pursuant to section 23(6) of *ATIPPA, 2015* to notify the applicant.

When notifying the applicant, the public body should also send a copy of the notice to our Office, de-identified if possible. This applies to extensions granted during extraordinary circumstances, such as January's state of emergency and those that our Office may grant at this time during the present pandemic, and it also applies when public bodies return to normal operations.

What to Do and How to Communicate in an Emergency

Emergencies do not supplant the need for privacy but they do impact it. While privacy should still be protected where possible, the need for complete and accurate information flow in a crisis is critical. Do not let privacy considerations put anyone's health at risk.

ATIPPA, 2015, as well as the *Personal Health Information Act*, have been designed to accommodate these circumstances. The OIPC has developed a slide deck, "Don't Blame Privacy – What to Do and How to Communicate in an Emergency" to inform public bodies and custodians about information collection, use and disclosure in emergency situations.

[Don't Blame Privacy – What to Do and How to Communicate in an Emergency](#)

Privacy Impact Assessments

All public bodies are expected to be in compliance with Part III of *ATIPPA, 2015* – Protection of Personal Information. This section establishes expectations with regard to collection, use, disclosure, accuracy, retention and protection of personal information in the custody or control of a public body. These expectations apply to existing records and systems, as well as new projects and initiatives. A useful tool in ensuring compliance with the legislation and demonstrating due diligence to the OIPC and stakeholders is the privacy impact assessment ("PIA").

Generally, public bodies would first complete a preliminary privacy impact assessment ("PPIA") to evaluate and mitigate potential privacy risks, and assess whether a more comprehensive review of privacy issues (i.e. a PIA) is required. Section 2(w) of *ATIPPA, 2015* defines a PIA as: "an assessment that is conducted by a public body as defined under subparagraph (x)(i) to determine if a current or proposed program or service meets or will meet the requirements of Part III of this Act."

Section 72 requires departments and branches of the executive to conduct a PPIA or a PIA during the development of a program or service. Where the program or service is a common or integrated program or service, the PIA must be shared with this Office. Beyond the statutory requirement for some public bodies to conduct a PIA, there are various situations where a PIA would be beneficial for all public bodies; for example, if a) a privacy complaint were to be received, b) the OIPC launched an own-motion or audit investigation, or c) a breach occurs. PIAs are great tools to assist in demonstrating an understanding of the expectations of *ATIPPA, 2015* and due diligence on behalf of the public body.

Remember: if you collect it, you need to protect it. One of the first steps in a PIA is to document the information collected, the authority for the collection and why each piece of information is required for the identified purpose. During this part of the assessment, the public body may determine that it can collect less information, which has a trickle-down effect on other responsibilities. For example, if information is not collected in the first place, there are no obligations regarding accuracy.

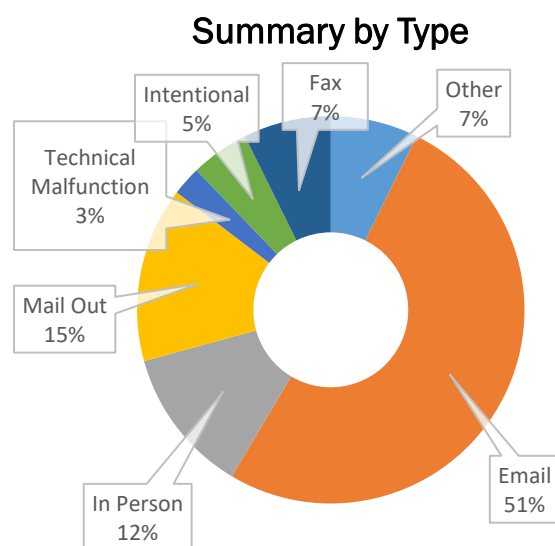
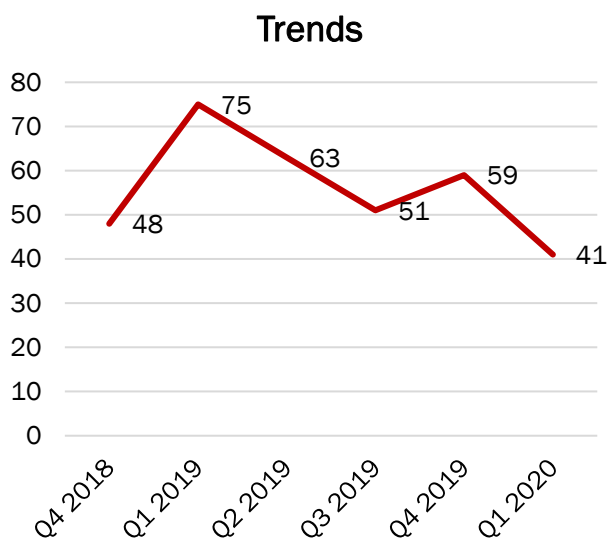
If a public body ever finds itself reporting a breach, responding to a complaint or the subject of an OIPC investigation, being able to provide a PIA will be immensely beneficial. It will demonstrate proactive efforts on behalf of the public body to ensure compliance with *ATIPPA, 2015* and recognition of the trust people placed in it when providing personal information in the first place.

ATIPPA, 2015 Privacy Breach Statistics January 1 – March 31, 2020

During the first quarter of 2020 (January 1 to March 31, 2020), the OIPC received 41 privacy breach reports from 24 public bodies under *ATIPPA, 2015*. This is a significant decrease from the 59 breaches reported during the previous quarter.

If any public body would like the OIPC to deliver training regarding privacy breaches, or any other topic relating to access or privacy, please contact our Office to arrange a time.

Summary by Public Body	
City of Corner Brook	1
City of St. John's	3
College of the North Atlantic	3
Department of Advanced Education, Skills and Labour	1
Department of Children, Seniors and Social Development	7
Department of Education and Early Childhood Development	1
Department of Fisheries and Land Resources	2
Department of Justice and Public Safety	1
Department of Service NL	1
Department of Transportation and Works	1
Human Resource Secretariat	2
Human Rights Commission	1
Labrador – Grenfell Health	1
Memorial University	1
Nalcor Energy	3
Newfoundland and Labrador English School District	2
Newfoundland and Labrador Legal Aid Commission	2
Office of the Citizens' Representative	1
Town of Channel-Port Aux Basques	1
Town of Hughes Brook	1
Town of Kippens	1
Town of Wabana	1
Western Integrated Health Authority	2
Workplace NL	1



The OIPC has issued a [Tip Sheet](#) on avoiding inadvertent privacy breaches