

Municipal Matters: Designating the Head

PURPOSE

This guidance is to assist municipalities in understanding the requirement of designating a head under the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015) and what a municipality might want to consider when making this designation.

LEGISLATIVE OVERVIEW

For municipalities, designation of the head starts with section 2(j)(v) of ATIPPA, 2015 which states:

(2)(j) "head", in relation to a public body, means...

(v) the person or group of persons designated under section 109...as the head of the public body;

Pursuant to sections 2(p)(iii) and 2(o)(iv) of ATIPPA, 2015, a municipality is considered to be both a "local public body" and a "local government body".

Section 109 of ATIPPA, 2015 speaks specifically to the designation of a head stating:

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.

ROLE OF THE HEAD OF A PUBLIC BODY

ATIPPA, 2015 says that all actions and decisions of a public body are those of the head of the public body (Head). The responsibilities of the Head include, but are not limited to:

- 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 ATIPPA, 2015 makes it possible for a group of persons to act as the Head of a local public body, prior to designating such a group to take on those responsibilities, 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. 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 consider that, except in rare cases where resources and staff are very limited, the Head and the ATIPP Coordinator should not be the same person. 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, ATIPPA, 2015 requires that the Coordinator be staff of the public body.

Contact OIPC with any questions:

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