



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER

NEWFOUNDLAND AND LABRADOR

ATIPP Coordinators' Toolkit

September 24, 2018

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ATIPP Coordinators' Toolkit

Introduction

This document is designed to be a quick-reference guide to be used throughout the process of responding to access to information requests. Its intent is to assist coordinators in building their access to information request skill-sets and proficiency. It will increase efficiency while ensuring coordinators are aware of, and meet the legislative obligations imposed upon their respective public bodies.

All public bodies must designate a Coordinator. It is the role of the Coordinator to:

- receive and process access requests;
- communicate with applicants and third parties;
- educate staff about the applicable provisions of the *ATIPPA, 2015*;
- track requests made under this Act and the outcome of those requests; and
- carry out any other access and privacy duties as necessary.

As was recognized by the 2014 *ATIPPA* Statutory Review Committee:

ATIPP coordinators must be regarded as the access and privacy experts in their public body [...] all coordinators must be provided the training and opportunity to develop the necessary expertise to properly apply the provisions of the Act.

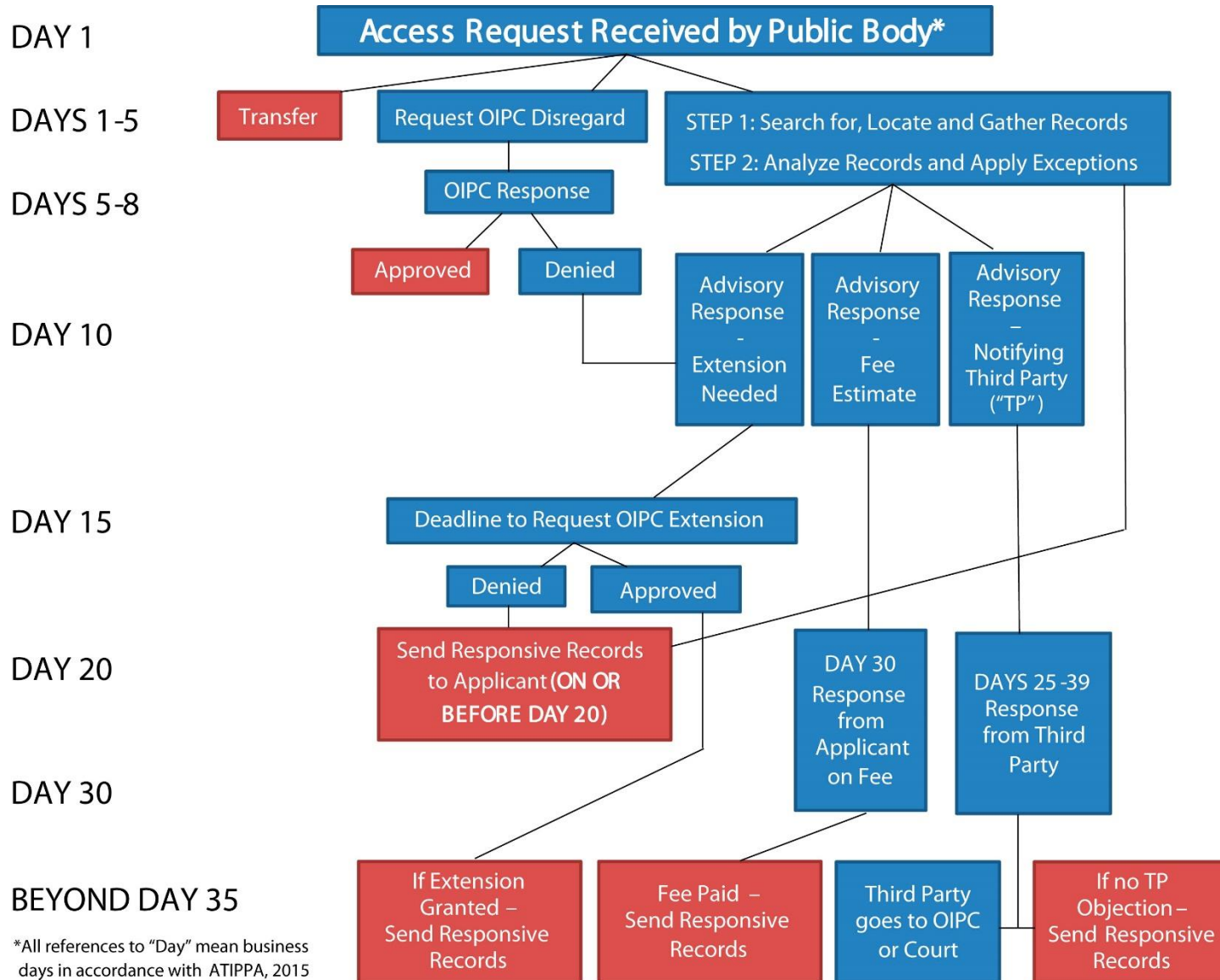
This toolkit provides:

- i) A flowchart of the timelines of an access to information request. This document can be posted and referred to throughout the access to information request process so that important deadlines are not overlooked.
- ii) Simple, abridged descriptions of the exceptions to access contained in the Act. This section will allow coordinators to identify exceptions that may apply to the set of records they are examining. If a coordinator believes from the description given that the exception may apply, the Coordinator should then refer to the full language of the provision as contained in the Act and consult the [Access to Information Policy and Procedures Manual](#) for further guidance as to the exceptions applicability.
- iii) Quick tips and an explanation of the process for requesting disregards and time extensions.
- iv) A checklist which coordinators can copy and place in each of their Complaint files to ensure that their interactions with the Office of the Information and Privacy Commissioner (OIPC) are conducted in accordance with legislative obligations and timelines.
- v) A list of resources available from the OIPC and the ATIPP Office.



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Flowchart of Access Timelines



Exceptions to Disclosure Overview

Section 5 of the *ATIPPA, 2015* outlines the types of records which are not subject to the Act. Coordinators should first determine whether the requested records are subject to the provisions of the *ATIPPA, 2015* before assessing the records for the application of exceptions. You may not refuse access to public body records that are subject to the *ATIPPA, 2015* for any reason other than the legislated exceptions. Information withheld for reasons other than these exceptions will likely be recommended for release if a complaint is received at the OIPC.

Section and Title	Mandatory or Discretionary	Applies to...
Section 27 Cabinet confidences	Mandatory	<ul style="list-style-type: none"> - cabinet records; - information in another record that would reveal the substance of deliberations of Cabinet.
Section 28 Local public body confidences	Discretionary	<ul style="list-style-type: none"> - certain documents in draft form; - the substance of deliberations of certain meetings.
Section 29 Policy advice or recommendations	Discretionary	<ul style="list-style-type: none"> - advice, proposals recommendations, analyses or policy options developed by or for a public body or minister; - the contents of certain incomplete reports; - draft legislation or regulations.
Section 30 Legal advice	Discretionary	<ul style="list-style-type: none"> - information subject to solicitor and client privilege or litigation privilege of a public body; - information that would disclose legal opinions.
	Mandatory	<ul style="list-style-type: none"> - information subject to solicitor and client privilege or litigation privilege of a person other than the public body.
Section 31 Disclosure harmful to law enforcement	Discretionary	<ul style="list-style-type: none"> - information relating to law enforcement matters, investigations, confidential informant information, intelligence, prosecutorial discretion; security arrangements, weapons, correctional records, legal proceedings, etc.
Section 32 Confidential evaluations	Discretionary	<ul style="list-style-type: none"> - evaluative or opinion material compiled to: <ul style="list-style-type: none"> - determine suitability, eligibility or qualifications for certain positions, roles or honors; - to assess the teaching materials or research of persons associated with post-secondary educational bodies.
Section 33 Workplace investigations	Mandatory	<ul style="list-style-type: none"> - relevant information created or gathered for the purpose of a workplace investigation. Unless applicant is a party to the investigation.
Section 34 Disclosure harmful to intergovernmental relations or negotiations	Discretionary	<ul style="list-style-type: none"> - disclosures which could reasonably be expected to harm the conduct of the provincial government or its relationship with specific named entities.
Section 35 Disclosure harmful to the financial or economic interests of a public body	Discretionary	<ul style="list-style-type: none"> - trade secrets; - certain types of information that have, or are reasonably likely to have, monetary value; - plans related to public body administration or management which are not yet implemented or public;

<p>Section 35 (cont'd)</p>		<ul style="list-style-type: none"> - disclosures which may result in the premature disclosure of a proposal or project or in significant loss or gain to a third party; - certain research information of public body employees if the disclosure could deprive the employee of priority of publication; - positions, plans, procedures, criteria or instructions developed for the purpose of negotiations, or considerations which relate to those negotiations; - disclosures which may prejudice financial or economic interests; - disclosures which may injure the ability of the provincial government to manage the economy.
<p>Section 36 Disclosure harmful to conservation</p>	<p>Discretionary</p>	<ul style="list-style-type: none"> - disclosures which could reasonably be expected to harm: <ul style="list-style-type: none"> - the conservation of fossil sites; - natural sites; - sites with anthropological or heritage value; - an endangered, threatened or vulnerable species, sub- species or a population of a species; - a rare or endangered living resource.
<p>Section 37 Disclosure harmful to individual or public safety</p>	<p>Discretionary</p>	<ul style="list-style-type: none"> - disclosures that could reasonably be expected to: <ul style="list-style-type: none"> - threaten the safety or mental/physical health of a person other than the applicant; - interfere with public safety; or - result in immediate and grave harm to the applicant.
<p>Section 38 Disclosure harmful to labour relations interests of public body as employer</p>	<p>Discretionary</p>	<ul style="list-style-type: none"> - information that would reveal labour relations information of the public body as an employer, if that information was prepared or supplied in confidence and is consistently treated as such. - labour relations information the disclosure of which could reasonably be expected to significantly harm competitive positions/interfere with negotiating positions/result in undue financial loss or gain to the public body/reveal information supplied to, or the report of, certain labour relations professionals.
<p>Section 39 Disclosure Harmful to Business Interests of a Third Party</p>	<p>Mandatory</p>	<ul style="list-style-type: none"> - tax and royalty information; - information that would reveal trade secrets or commercial/ financial/labour relations/scientific/technical information of a third party, if that information was supplied in confidence; and the disclosure could reasonably be expected to significantly harm competitive positions/interfere with negotiating positions/result in similar information no longer being supplied despite a public interest/result in undue financial loss or gain to any person/reveal information supplied to, or the report of, an certain labour relations professionals.
<p>Section 40 Disclosure harmful to personal privacy</p>	<p>Mandatory</p>	<ul style="list-style-type: none"> - disclosures which would be an unreasonable invasion of a third party's personal privacy. Considerations are outlined.
<p>Section 41 Disclosure of House of Assembly service and statutory office records</p>	<p>Mandatory</p>	<ul style="list-style-type: none"> - records connected with the investigatory functions of statutory offices; - advice/recommendations given to the Speaker or the Clerk of the House of Assembly or the House of Assembly Management Commission that is not legislatively required to be public; - information where non-disclosure is required for the purpose of avoiding an infringement of the privileges of the House of Assembly or a member of the House of Assembly.

Understanding the Types of Exceptions

What is a Mandatory Exception?

Mandatory exceptions contain the phrase “shall refuse to disclose”. These provisions require a public body to refuse to disclose the information in response to an access to information request if the record or information in the record falls squarely within the wording of the provision.

What is a Discretionary Exception?

Discretionary exceptions contain the phrase “may refuse to disclose”. These provisions allow public bodies to disclose information in response to an access to information request even if the record or part of the record falls squarely within the wording of the provision.

Public Interest Override

In relation to most discretionary exceptions, the public body must consider whether the public interest in releasing the information is such that it outweighs the discretionary exception. The public interest override requires the public body to release information, even after an initial decision to apply a discretionary exception, if there is a public interest in its release.

Sections requiring consideration of the public interest override:

- section 28 (local public body confidences);
- section 29 (policy advice or recommendations);
- subsection 30(1) (legal advice);
- section 32 (confidential evaluations);
- section 34 (disclosure harmful to intergovernmental relations or negotiations);
- section 35 (disclosure harmful to the financial or economic interests of a public body);
- section 36 (disclosure harmful to conservation); and
- section 38 (disclosure harmful to labour relations interests of public body as employer).

Quick Tips – Requesting a Time Extension

What is an application for a time extension?

When you receive an access to information request and you believe you will be unable to respond within the legislative time limit (i.e. 20 business days), you may apply to the Commissioner for an extension of that time limit. The time limit cannot be extended without approval from the OIPC.

When do I submit my request?

Time extension requests must be received by the OIPC not later than 15 business days after the public body receives an access request. Applications may be submitted outside of that period if the public body can satisfy the OIPC that extraordinary circumstances exist.

Where do I submit my request?

It is recommended that you contact the OIPC via e-mail (commissioner@oipc.nl.ca) although you may also want to discuss the issue via telephone with OIPC staff.

What should I include with my request?

Your request should include:

- the name of your public body;
- your name and contact information;
- the public body file number;
- the wording of the access request;
- the date the access request was received;
- the original due date of request;
- a copy of the section 15 advisory response letter, if sent (with personal information removed);
- information regarding any estimate of cost sent to an applicant in accordance with section 26 (with personal information removed);
- an explanation of what work has been done to date to process the access request and what work remains to be done;
- an explanation of whether you are able to release information in batches as records are processed,
- the length of time extension being requested; and
- an explanation of the circumstances that you believe warrant the extension.

When will I receive a response?

You will receive a response within three business days after we receive your application for a time extension.

Submitting a time extension request does not suspend the timeline for providing a response to an applicant. Therefore, you must continue to process the access to information request in case your request for an extension is unsuccessful. Coordinators must be mindful that if they are unsuccessful in obtaining an extension they could be as far as eighteen business days into their timeline for providing a final response.

For further information see our [Guidance Document](#).

Quick Tips – Applying for Approval to Disregard an Access Request

Under what circumstances can you apply for approval to disregard an access request?

Where you can establish that an access to information request:

- would unreasonably interfere with the operations of your public body;
- is for information already provided to the applicant; or
- would amount to an abuse of the right to make a request because it is
 - trivial, frivolous or vexatious,
 - unduly repetitive or systematic,
 - excessively broad or incomprehensible, or
 - otherwise made in bad faith.

If one or more of the foregoing apply, you may seek approval from the Commissioner to disregard that request. If successful, you must notify the applicant that your public body is entitled to refuse to grant access to the requested records, citing the reason(s) for the refusal, that the decision was approved by the Commissioner, and advising the applicant of the right to appeal the public body's decision. A request cannot be disregarded without approval from the Commissioner.

When do I submit my request?

Applications to disregard must be received by the Commissioner not later than 5 business days after the public body receives an access request. Applications may be submitted outside of that period if the public body can satisfy the OIPC that extraordinary circumstances exist.

Where do I submit my request?

It is recommended that you contact the OIPC via e-mail (commissioner@oipc.nl.ca) although you may also want to discuss the issue via telephone with OIPC staff.

What should I include with my request?

The specific grounds for the request to disregard are set out in section 21. You must provide an explanation and evidence that establishes reasonable grounds that one or more of the tests for disregarding an access request are met.

When will I receive a response?

You will receive a response within three business days after we receive your application to disregard a request.

What are my obligations while I wait for a response?

Submitting a request for a disregard does not suspend the timeline for providing a response to an applicant. Therefore, you must continue to process the access to information request to the best of your abilities in case your request for a disregard is unsuccessful. Coordinators must be mindful that if they are unsuccessful in obtaining a disregard they could be as far as eight business days into their timeline for providing an advisory response.

For further information see our [Guidance Document](#).

Handling an Access/Correction Complaint with the OIPC – Checklist (Page 1)

Action	Complete?	Date
Receive copy of Notification Letter, including Complaint and Guidelines.		
Locate corresponding Access to Information Request file.		
Determine whether Complainant is the Applicant or a Third Party.		
Calculate 10 business day deadline for providing records and submissions to OIPC.		
Calculate 30 business day deadline for informal resolution.		
Calculate 65 business day deadline for Commissioner's Report.		
Assemble the records for your response to the Complaint.		
<p>Ensure you have included:</p> <ol style="list-style-type: none"> 1. a copy of the Applicant's access to information request; 2. the decision letter in response to the request; 3. any correspondence regarding the request; and 4. any and all other information you think appropriate to provide. 		
<p>Additionally, if the Complaint relates to severing include:</p> <ol style="list-style-type: none"> 1. a complete copy of the records responsive to the Access Request, or 2. a complete copy of the records responsive to the Complaint (if the Complainant is a Third Party). <p>Provide both a SEVERED COPY, an exact copy of what was sent to the Applicant/Complainant <u>AND</u> a COMPLETE COPY (UNSEVERED but with severing HIGHLIGHTED) of the original responsive records.</p>		
<p>Additionally, if the Complaint relates to reasonableness of search, include a response to all questions asked by the OIPC in its Notification Letter.</p>		
<p>Prepare a written submission. Ensure you have included:</p> <ol style="list-style-type: none"> 1. the justification for the reliance on any exceptions claimed; 2. the reasons for the refusal and reference to the relevant provisions of the Act; 3. if applicable, justification for the belief that the information does not meet the three-part test set out in section 39 and an explanation of your decision to give notification to the Third Party under section 19; and 4. any other information requested by the OIPC if there are issues in relation to a deemed refusal or reasonableness of search. <p>THIS MAY BE YOUR ONLY OPPORTUNITY TO MAKE A SUBMISSION TO THE OIPC.</p>		
<p>Ensure pages of submission and records are numbered sequentially and a table of contents is provided.</p>		

Handling an Access /Correction Complaint with the OIPC – Checklist (Page 2)

<i>Action</i>	<i>Complete?</i>	<i>Date</i>
If applicable, provide evidence that the public interest has been considered and disclosure is not required by section 9.		
Ensure updates are provided to Applicant if Complainant is a Third Party.		
Ensure that all subsequent correspondence with the Applicant and any affected third parties regarding this matter is copied to OIPC.		
Provide additional submissions if sought by OIPC for formal investigation within set timeframe.		
When Commissioner's Report is issued, ensure the Head receives it as soon as possible.		
Ensure the Head has: <ul style="list-style-type: none"> - responded to Commissioner's recommendations within 10 business days of receipt; <u>AND</u> - sent notice to the Commissioner and any person who was sent a copy of the Commissioner's Report. 		
OR		
Ensure the Head has: <ul style="list-style-type: none"> - applied to the Trial Division for a declaration that the public body is not required to comply with the recommendations within 10 business days of receipt; <u>AND</u> - served a copy of the application on the Commissioner and any person who received a copy of the Report. 		
Ensure that compliance with the Commissioner's recommendations, if accepted, has been carried out within 15 days of receipt of the Commissioner's Report.		

Handling a Privacy Complaint with the OIPC – Checklist

Action	Complete?	Date
Receive copy of Notification Letter, including Complaint.		
Calculate deadline as set out in the Notification letter for providing records and submissions to OIPC.		
Prepare a written submission in response to the Complaint.		
Ensure you have included:		
1. a response to the issue(s) raised in the complaint;		
2. any correspondence or records related to the complaint and any other correspondence or record which might assist in clarification or resolution of this matter;		
3. any policies or procedures that relate to the complaint;		
4. any remediation plan you have developed to deal with breaches of privacy/personal information;		
5. any comments that you wish to make in response to the Complaint; and		
6. a response to all questions asked by the OIPC.		
THIS MAY BE YOUR ONLY OPPORTUNITY TO MAKE A SUBMISSION TO THE OIPC.		
Provide additional submissions if sought by OIPC for formal investigation within set timeframe.		
When the Commissioner's Report is issued, ensure the Head receives it as soon as possible.		
Ensure the Head has:		
– responded to Commissioner's recommendations within 10 business days of receipt; <u>AND</u>		
– sent notice to the Commissioner and any person who was sent a copy of the Commissioner's Report.		
OR		
Ensure the Head has:		
– applied to the Trial Division for a declaration that the public body is not required to comply with the recommendations within 10 business days of receipt (if Commissioner's recommendation was under s. 76(1)); <u>AND</u>		
– served a copy of the application on the Commissioner and any person who received a copy of the Report.		
Follow up on compliance with the Commissioner's recommendations, if accepted.		

Resources

Office of the Information and Privacy Commissioner (OIPC)

Our Office publishes a variety of documents including guidelines, guidance documents, practice bulletins, audit reports, newsletters, Commissioner's Reports and case law. These publications may be found at <http://www.oipc.nl.ca/guidance> and <http://www.oipc.nl.ca/reports>.

ATIPP Office (Department of Justice and Public Safety)

The ATIPP Office of the Department of Justice and Public Safety has produced policy and procedure manuals in relation to both the [access to information](#) and [protection of privacy](#) provisions of the Act.

Additionally, the ATIPP Office has created a variety of handouts and guidelines. These publications may be found at <http://www.atipp.gov.nl.ca/info/index.html> or by calling that Office at (709) 729-7072 or (877) 895-8891.

WHAT IS THE ROLE OF THE OIPC?

The OIPC is an independent office of the House of Assembly that oversees compliance with the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)* and the *Personal Health Information Act (PHIA)*. The Commissioner is non-partisan and independent from government in the same way that the Auditor General or Chief Electoral Officer is. The OIPC investigates complaints about timely and proper access to information held by public bodies, and monitors public bodies' efforts to protect personal information.

Duties of the OIPC include:

- investigating access to information and privacy complaints;
- receiving privacy breach notifications;
- processing time extension requests;
- conducting own motion investigations;
- education, advocacy, audits, commenting on draft legislation and more.

WHAT IS THE ROLE OF THE ATIPP OFFICE?

The ATIPP Office is a government division located within the Department of Justice and Public Safety. The ATIPP Office is responsible for the administration, implementation and coordination of the *ATIPPA, 2015*.

Duties of the ATIPP Office include:

- providing advice, support guidance and assistance to public bodies;
- providing advice to ATIPP Coordinators in relation to privacy and access;
- assisting public bodies with responding to privacy breaches and the implementation of the appropriate privacy breach protocol;
- providing forms, templates, guides and handouts relating to access and privacy; and
- providing training in relation to the *ATIPPA, 2015*.