



ABOVE BOARD

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“The Commissioner’s
role is to facilitate the
effort of a requestor to
seek access to
information [...] and is
effectively an
ombudsman or liaison
between the citizen and
government in
attempting to resolve
the request by
mediation or otherwise
if documents or
information known to
be existing are being
withheld in whole or in
part for various
reasons”

*Justice Harrington, NL
CA, NL (Information and
Privacy Commissioner) v.
NL (Attorney General)*

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OIPC REMINDERS AND UPDATES

Civic Holidays

Municipalities, other than St. John's and Harbour Grace, are reminded that municipal civic holidays which have been fixed by council (one per year) are now holidays in accordance with the [Interpretation Act](#). St. John's and Harbour Grace determine their own prescribed civic holiday (Regatta).

These holidays are not included in the calculation of business days.

Municipalities are reminded to advise the [ATIPP Office](#) of any such fixed municipal civic holidays.

Time Extensions

The OIPC has developed a new [Time Extension form](#) for use by public bodies.

The intention of this revised form is to provide clarity to public bodies in terms of what information will be required to support an application. It will also provide consistency in the evidence being provided to this Office hopefully allowing for easier processing of applications.

Our [guidance document](#) has been updated accordingly.

Tip of the Hat — City of St. John's

Building upon the Commissioner's encouragement for public bodies to develop privacy management programs, the City of St. John's recently voted in favour of implementing a new privacy management policy for the City. This policy includes new procedures and guidelines. The City also committed to privacy training for all Councillors and all employees who have access to personal information.

The City's ATIPP Coordinator, Kenessa Cutler, has been instrumental in moving the City forward in relation to its obligations and responsibilities under the *ATIPPA, 2015*. She is committed to ensuring the City remains transparent and accountable while also properly protecting the personal information it holds. Ms. Cutler is a valuable ATIPP resource for the City.

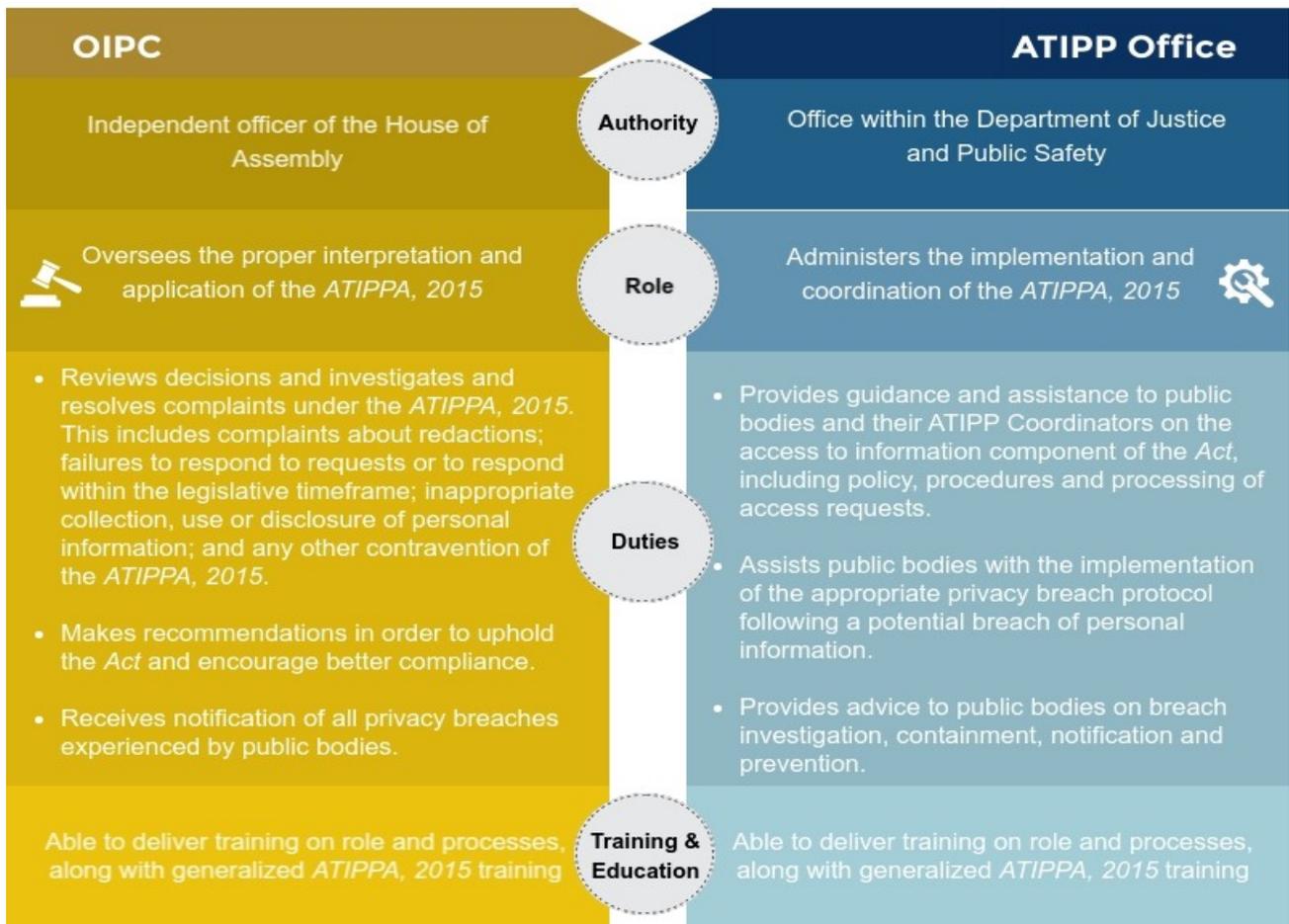
PUBLICLY AVAILABLE INFORMATION

Public bodies are reminded that individuals who request publicly available information should not be directed through the ATIPP process. Rather, when a public body receives a request for publicly available information, the public body should provide the individual with the exact location of the information – the website url, if the information is available on the internet; or the address, if the information is only available at a specific physical location – as soon as possible after receiving the request. Public bodies should also explain to the individual why the ATIPP process is not being employed.

Public bodies should be aware that there is nothing in the *ATIPPA, 2015* which prohibits a public body from providing an individual with publicly available information where requested but if a public body chooses to do so, they must not apply any redactions to the information or employ any *ATIPPA, 2015* procedures such as advisory/final responses.

THE ROLES OF THE OIPC AND THE ATIPP OFFICE

The OIPC and the ATIPP Office are separate entities with distinct roles and responsibilities. Public bodies should familiarize themselves with the duties of each office so they know when and how to interact with each office throughout the ATIPP process.



DEEMED REFUSALS AND THE DUTY TO ASSIST

Sections 13 and 16 of the *ATIPPA, 2015* are intrinsically linked based on the requirement for a response without delay to an Access Request.

Section 13 states:

13. (1) The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.

Section 16 states:

16. (1) The head of a public body shall respond to a request in accordance with section 17 or 18 , without delay and in any event not more than 20 business days after receiving it, unless the time limit for responding is extended under section 23.

(2) Where the head of a public body fails to respond within the period of 20 business days or an extended period, the head is considered to have refused access to the record or refused the request for correction of personal information.

Public bodies who fail to respond within the legislative timeframe are deemed to have refused access or correction. Those public bodies have also failed in their duty to assist by failing to “respond without delay”. In these instances, the applicant has a right to complain to the OIPC about both the failure to meet the deadline and the failure to meet the duty to assist. When public bodies issue their responses in these matters, they should advise the applicant of their right to complain on these bases and also should advise the applicant of the exact number of days by which the response is late and provide an explanation to the applicant for the delay.

In order to avoid deemed refusals, public bodies should be mindful of their right to request a time extension from the OIPC in accordance with section 23 of the *ATIPPA, 2015*. Such applications must be made within 15 business days of receiving a request.

A discussion on deemed refusals and the duty to assist can be found in the recent [Commissioner’s Report A-2019-015](#).

Practice Tip — Time Extensions

For each Access Request you receive, make note of the 15 business day mark and set a reminder in advance of this date so that you do not miss the deadline to apply for a time extension should you come to realize one is required.

Apply for a time extension as early as possible and as soon as you believe one may be necessary. There is nothing which prohibits you from responding well in advance of the revised deadline, if an extension is approved, or within the original timeframe if this becomes possible.

INVESTIGATING PRIVACY BREACHES

The Commissioner recently discussed what is expected from public bodies where a privacy breach investigation is initiated by this Office in [Report PH-2019-001](#).

Public bodies must be mindful that where an investigation of a privacy breach is conducted by this Office, we must be able to review the investigation conducted by the public body, including any records which were created. Where an internal investigation is on-going at the time our Office initiates its investigation, public bodies should provide a detailed description of the investigation to-date with an explanation of what work remains to be done in the investigation and a timeframe for the conclusion of the investigation. The oversight mandate of this Office and the power to compel documents under section 97(3) of the *ATIPPA, 2015* requires public bodies to provide these records.

This Office expects public bodies to provide a detailed response including its full investigation documents, its investigative report and its investigation conclusions. It is not enough for public bodies to reiterate their conclusions about whether a breach has occurred, nor is it sufficient to state that an investigation has occurred. Where possible, public bodies should identify the root cause of the breach if such is determined during its investigation. The names, titles, and contact information of anyone involved in the investigation, including those individuals who were interviewed, should be provided. If the public body determines that no breach occurred, they should provide details of how allegedly inappropriate actions were determined to be valid and any corroborating evidence.

It is time to start thinking about your Right to Know (RTK) Week plans!

What will your organization do this year to raise awareness about the public's right to access information?

RTK Week is normally celebrated the last full week of September. For activity and communication ideas, please visit our [website](#).

MATTERS INVOLVING BOTH ATIPPA, 2015 AND PHIA

Section 12(2) of the [Personal Health Information Act](#) ("PHIA") discusses how requests for personal health information should be handled by public bodies that are not custodians. Where an individual requests records containing personal health information or a combination of personal health information and personal information from a public body that is not a custodian, the *ATIPPA, 2015* would apply to such a request and the accompanying disclosure, if any.

Where a public body that is also a custodian receives a request for personal information contained in a record which also contains personal health information, the *ATIPPA, 2015* would apply to the request and the accompanying disclosure, if any. Disclosure of the requested personal information would only occur where the requested information can reasonably be separated from the record; the personal health information would only be released in accordance with a request for that information under the *PHIA*.

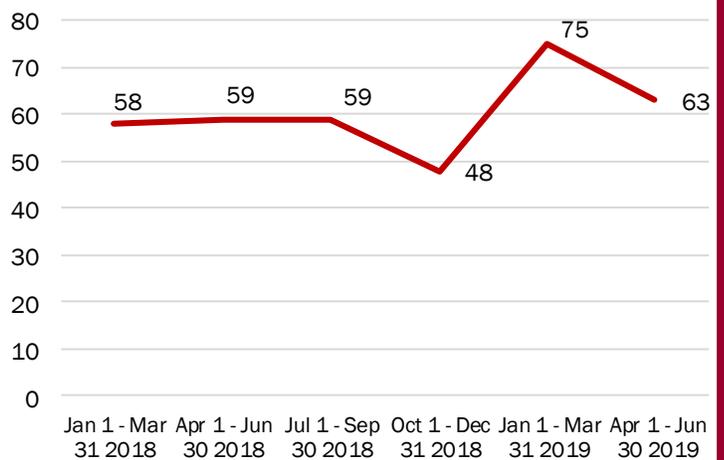
ATIPPA, 2015 PRIVACY BREACH STATISTICS APRIL 1 – JUNE 30, 2019

During this reporting period (April 1 – June 30, 2019), the OIPC received 63 privacy breach reports from 23 public bodies under the ATIPPA, 2015. This is a decrease from the 75 breaches reported in the previous reporting period; however, the number of reporting public bodies increased from 21 to 23.

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

Summary by Public Body	
Central Health	1
City of Mount Pearl	1
City of St. John's	6
College of the North Atlantic	4
Dept. of Advanced Education, Skills and Labour	3
Dept. of Children, Seniors and Social Development	5
Dept. of Education and Early Childhood Development	1
Dept. of Finance	1
Dept. of Fisheries and Land Resources	1
Dept. of Service NL	5
Dept. of Transportation and Works	1
Eastern Health	1
House of Assembly	2
Human Resource Secretariat	3
Memorial University	4
Nalcor Energy	4
Newfoundland and Labrador English School District	1
Newfoundland and Labrador Housing Corporation	2
Newfoundland Labrador Legal Aid Commission	10
Newfoundland and Labrador Liquor Corporation	1
Public Service Commission	1
Royal Newfoundland Constabulary	2
Workplace NL	3

Total Number of Breaches



Summary By Type

