

Publication Scheme Template

Introduction

In March of 2015 the ATIPPA Review Committee issued their report regarding the review of the Access to Information and Protection of Privacy Act. In this report the Committee noted that:

While the Office of Public Engagement plans to oversee publication schemes, it may be more appropriate for an arms' length body such as the OIPC to set out standards for the public bodies to apply.

A publication scheme is like an outline of the classes of information each public body will publish or intends to publish so it may be read and easily accessed by the public. This approach would be an effective substitute for the information directory that is currently mandated by section 69 of the ATIPPA. The directory was to be an extensive listing of information about public bodies and a catalogue of personal information banks held by them. However, it has never been completed. OPE officials told the Committee that considerable work on a directory of information had been undertaken after the Act came into effect, but it quickly became outdated and was then abandoned.

The Committee then concluded that:

Section 69 of ATIPPA should be revised, and responsibility for publishing information should be shifted from the minister responsible for the administration of the Act to the head of each public body. However, the minister should remain generally responsible for ensuring compliance. He should advise Cabinet to make regulations to specify which public bodies must make their information available and when they should make it available. This would allow a gradual coming into force of the practice of publishing information, with the largest public bodies presumably being able to comply most quickly.

Publication Scheme Template

This publication scheme template has been prepared and approved by the Office of the Information and Privacy Commissioner (the "OIPC") in accordance with section 111(1) of the Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015):

The commissioner shall create a standard template for the publication of information by public bodies to assist in identifying and locating records in the custody or under the control of public bodies.



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
Tel: (709) 729-6309
Fax: (709) 729-6500
Toll Free in
Newfoundland
and Labrador:
1-877-729-6309
E-mail:
commissioner@oipc.nl.ca
www.oipc.nl.ca

This template is intended to be adopted by all public bodies (listed in the Regulations) in accordance with section 111(2) of the ATIPPA, 2015:

The head of a public body shall adapt the standard template to its functions and publish its own information according to that adapted template.

Public bodies listed in the Regulations shall, in accordance with section 111(3) and (4) publish:

1. a description of the mandate and functions of the public body and its components;
2. a description and list of the records in the custody or under the control of the public body, including personal information banks;
3. the name, title, business address and business telephone number of the head and coordinator of the public body;
4. a description of the manuals used by employees of the public body in administering or carrying out the programs and activities of the public body; and
5. the following information about the personal information banks:
 - a. its name and location;
 - b. a description of the kind of personal information and the categories of individuals whose personal information is included;
 - c. the authority and purposes for collecting the personal information;
 - d. the purposes for which the personal information is used or disclosed; and
 - e. the categories of persons who use the personal information or to whom it is disclosed.

Description of Mandate and Functions

This must be done for all components of the public body and for the public body as a whole. For components, this description should refer to their specific area of responsibility. Currently the mandates of core government departments, for example, are listed on the government's website, however these would have to be augmented by a similar description for each of the department's components. Also, if the mandate statement of the public body does not include how its work is to be achieved and its functions, that would have to be added.

For example, at the time of writing (December 2015), the Department of Business, Tourism, Culture and Rural Development states:

The vision of the Department of Business, Tourism, Culture and Rural Development (BTCRD) is of a vibrant, diverse and sustainable economy, with productive, prosperous and culturally-rich communities and regions, making Newfoundland and Labrador a business and tourism "destination of choice".

The Department is the lead for the economic, culture, and innovation agenda of the Provincial Government. We provide insight, intelligence, innovation, and investment

services for businesses and communities to create a strong, vibrant business community and regional economies. While BTCRD plays a prominent role in developing tools and programs to assist businesses and its clients, it is the investment, effort, partnerships and collaboration, and risk undertaken by enterprises and their employees that lead to wealth generation.

BTCRD is also one of the province's largest operators of tourism, culture and heritage facilities including Arts and Culture Centres, Provincial Historic Sites, and Visitor Information Centres, many of which are located in rural areas of the province. They provide important sources of employment, act as regional tourism anchor attractions, and are centers for community outreach, engagement and development. In this province, rural economic development has significantly been fueled by tourism development and the Department continues to partner with stakeholders in this sector to create new business and employment opportunities.

According to the Government's website, currently this department's branches and divisions include:

Executive

Deputy Minister's Office

Communications Division

Policy and Strategic Planning Division

Regional and Business Development Branch

Business Analysis Division

Portfolio Management Division

Trade and Investment Branch

International Business Development Division

Marketing, Enterprise and Outreach Division

Innovation and Sector Development Branch

Innovation and Advanced Technology Division

Information Management Division

Sector Development Division

Ocean Technology and Arctic Opportunities Branch

Tourism Branch

Tourism Marketing Division

Tourism Product Development Division

Tourism Research Division

Arts and Heritage Branch

Arts Division

Arts and Culture Centres Division

Heritage Division

Provincial Archaeology Office

Provincial Historic Sites

Therefore, for each of these components, the mandate and functions would have to be separately articulated in order to complete a publication scheme for this Department. All public bodies would have to break out its components in a similar way.

Description and List of Records

This description and list should include all records under the public body's custody or control. The use of categories is encouraged so that public bodies can efficiently describe the records they have but still with sufficient detail to make the list meaningful to the public.

"Custody or control" is not defined in the *ATIPPA, 2015* but has been discussed in past OIPC decisions, in particular A-2014-012:

The terms "custody" and "control" are not defined in the ATIPPA. Commissioners and courts in other jurisdictions have given these terms a broad and liberal interpretation in keeping with the intent of access to information legislation.

Most questions arise around records that the public body does not have in its physical possession. The Commissioner advised in A-2014-012 that in this situation one should use the legal test articulated by the Supreme Court of Canada in *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 (CanLII) at paragraph 50:

... in the context of these cases where the record requested is not in the physical possession of a government institution, the record will nonetheless be under its control if two questions are answered in the affirmative: (1) Do the contents of the document relate to a departmental matter? (2) Could the government institution reasonably expect to obtain a copy of the document upon request?

The complete list of factors set out in A-2014-012 should be reviewed if there is any question surrounding whether a record is in a public body's custody or control.

The description of the records should have sufficient detail "to assist in identifying and locating records". Therefore phrases like "correspondence related to departmental matters" would not be informative to the public, and instead public bodies should be clear about what the records are and what types of information they include. For example, wording like "management plans, codes, scientific data, contracts, applications and policy memos regarding aquaculture development" would be much more helpful.

Further, public bodies must list all records in their custody or control regardless of the accessibility of these records. To be clear, being included in the list of records held does not equate with being accessible by the public. If an exception under the Act applies, the record or part of the record can be withheld under the Act, but it should still be listed.

Contact Information

The name, title, business address and business phone number for the head of the public body and for its access coordinator must be provided.

Description of Manuals Used

This should include the manual's title, a description of its content and which processes it is used for by employees of the public body. This applies to all programs carried out or administered by the public body's employees.

Personal Information Banks

“Personal Information Bank” is not defined in *ATIPPA, 2015*. It is however defined by s.87.1(5) of the *Alberta Freedom of Information and Protection of Privacy Act* as

a collection of personal information that is organized or retrievable by the name of an individual or by an identifying number, symbol or other particular assigned to an individual.

This definition is very suitable for this jurisdiction as well, and we expect all such collections to be included in the published list.

The information required to be listed for each Personal Information Bank is set out in section 111(4):

- (a) its name and location;
- (b) a description of the kind of personal information and the categories of individuals whose personal information is included;
- (c) the authority and purposes for collecting the personal information;
- (d) the purposes for which the personal information is used or disclosed; and
- (e) the categories of persons who use the personal information or to whom it is disclosed.

Further, section 111(5) requires that any use or disclosure for another purpose be recorded and attached or linked to the personal information and that the published information be updated to reflect this change in purpose.

Conclusion

The purpose of this Publication Scheme Template is to “assist in identifying and locating records in the custody or under the control of public bodies”. It is provided in compliance with section 111(1) in anticipation of and in preparation for a decision by Government to designate public bodies which will be required to create and maintain publication schemes in compliance with section 111.

The Publication Schemes created based on this template should be living documents and it is strongly recommended that they be created in an online format, so that they can be kept current in an efficient manner.