



Access to Information and Protection of Privacy Act

Guidance

**TOOLKIT FOR HEADS OF
PUBLIC BODIES**

**STATUTORY PUBLIC BODIES &
ENTITIES**

TABLE OF CONTENTS

ROLES IN THE PUBLIC BODY

- 1 PRESCRIBED PUBLIC BODIES
- 2 HEAD
- 3 ACCESS AND PRIVACY OFFICER
- 4 DESIGNATED ACCESS OFFICER
- 5 DESIGNATED PRIVACY OFFICER
- 6 DESIGNATED ACCESS AND PRIVACY OFFICER
- 7 INFORMATION AND PRIVACY COMMISSIONER

APPOINTING OFFICERS

- 8 DELEGATION AND DESIGNATION
- 9 CORE COMPETENCIES

APPENDIX: DELEGATION AND DESIGNATION FORMS

- 1 HEAD DELEGATION FORM
- 2 DESIGNATED ACCESS OFFICER FORM
- 3 DESIGNATED PRIVACY OFFICER FORM
- 4 DESIGNATED ACCESS AND PRIVACY OFFICER FORM

PURPOSE

The purpose of this toolkit is to assist the Heads of Statutory and Non-Statutory Public Bodies or entities, understand their powers and duties under the *Access to Information and Protection of Privacy Act (ATIPP Act)*.

The toolkit provides instruction on:

- The new roles created in the Act
- The core responsibilities of each role
- Appointing designated officers
- Newly legislated activities, including recommendations to assist Heads for compliance.

ROLES AND RESPONSIBILITIES IN THE ATIPP ACT

The Access to Information and Protection of Privacy Act, commonly referred to as the ATIPP Act, establishes the following roles and responsibilities. For the purposes of the ATIPP Act, public bodies include the Head, employees and service providers.

1 Prescribed Public Bodies

The ATIPP Act provides a definition for public bodies that includes: ministerial (Government of Yukon departments, corporations and directorates), statutory bodies and entities (non-statutory bodies). Statutory and non-statutory bodies are prescribed through ATIPP Act Regulations.

Statutory public body

A “**STATUTORY BODY**” means a board, commission, council, committee, corporation, foundation or other body **(a)** that is established or incorporated under an Act, and **(b)** all the members, directors or officers of which are appointed by the Commissioner in Executive Council or a minister.

Non-Statutory public body (entity)

A “**PUBLIC BODY**” means (c) an entity prescribed as a public body.

Prescribed as a Ministerial public body

If a statutory public body or non-statutory public body (entity) is prescribed under the ATIPP Act Regulations as a program or activity of a ministerial public body, the Designated Officers appointed by the Head of the public body under which they are prescribed will be responsible for the duties, powers and functions under the ATIPP Act.

Statutory and Non-Statutory bodies and their employees, will be considered for the purposes of the ATIPP Act, as employees of the Ministerial public body.

2 Head

The ATIPP Act definition of the “**HEAD**” of a statutory public body, or non-statutory public body or entity, is the individual who holds the office or position prescribed in the ATIPP Act Regulations as the office or position of the head.

Heads may delegate any of their powers, except for the ability to delegate.

This means, if a head delegates their duties or powers to another position within a public body, duties or powers cannot be re-delegated by that position.

This clearly defined role of the Head in the Act has been made to increase accountability and expand the scope of the Act. Information and records held by the Head and their office will now be subject to the new Act.

The Head (or delegate) is responsible for decisions made under the Act that relate to their public body. These responsibilities include:

- Appointing designated officers for the public body;
- Receiving reports of employees not providing records to the Designated Access Officer within requested timelines;
- Responding to requests for information from the Designated Privacy Officer related to suspected unauthorized collection, use or disclosure of personal information;
- Making decisions regarding the lack of notification for collection of personal information;
- Disclosing personal information related to threats to public health or safety, or for evaluating the performance of an employee;
- Securing personal information against a privacy breach;
- Receiving recommendations from the Information and Privacy Commissioner on breach reports and determining whether to apply actions based on the recommendations;
- Personal information corrections requests;
- Final decision on access requests including responses and consultations. Must submit time extensions in conjunction with recommendations from the Designated Access Officer to either the Access and Privacy Officer or Information and Privacy Commissioner
- Responding to a compliance inspection by the Access and Privacy Officer or an investigation by the Information and Privacy Commissioner.

3 Access and Privacy Officer

The “ACCESS AND PRIVACY OFFICER” (APO) is an employee appointed by the Minister responsible for the Act (Minister of Highways and Public Works).

The APO provides oversight and advice to the Heads, Designated Access Officers and Designated Privacy Officers. This responsibility is intended to allow government to proactively assess and measure compliance.

The APO is responsible for accepting and refusing access requests, estimating costs, waivers for fees, extensions, compliance audits on public bodies, establishing an Access to Information Registry and publishing information related to compliance, including protocols.

This helps to ensure that public bodies are following the rules on standardization and compliance under the Act.

Other responsibilities include:

- Implementing policies, guidelines and procedures related to the management of a public body’s compliance with the ATIPP Act;
- Ensuring the public bodies understand their roles under the Act;
- Providing advisory services to employees of Ministerial public bodies;
- Providing training on access and privacy to Ministerial public bodies;
- Providing information to the public on how the ATIPP Office operates and information on the Act;
- Managing the ATIPP Shared Services, which may include:
 - Monitoring and tracking the processing of requests;
 - Meeting legislated timelines and notification requirements
 - Reviewing third party concerns related to access; and
 - Calculating fee estimates.

4 Designated Access Officer

The Head of a Ministerial public body is required to designate one or more employees of a public body as their “DESIGNATED ACCESS OFFICER” (DAO).

DAOs report directly to the Head (or designate) of the public body. They are responsible for discharging the public body’s statutory duties of processing access requests under Part 3 (Access to Information).

Other responsibilities include:

- Requesting relevant information from employees of the public body in order to respond to an access request;
- Notifying the Head of lack of response by an employee;
- Completing an Access Information Summary;
- Analyzing and severing information to which mandatory and/or discretionary exceptions to access apply;
- Making recommendations on access responses to the Head; and
- Receiving direction from the Head of the public body.

5 Designated Privacy Officer

Each public body is required to designate one employee as the “DESIGNATED PRIVACY OFFICER” (DPO) to ensure that public accountability is maintained when dealing with privacy matters. The DPO reports directly to the Head (or designate) of the public body.

The name of the DPO should be circulated within the organization and staff should be encouraged to discuss privacy issues. The title and contact information of each DPO will also be made available to the public.

The Designated Privacy Officer is responsible for:

- Receiving reports of suspected unauthorized collection;
- Receiving reports of suspected privacy breaches (unauthorized use and disclosure);
- Assessing and responding to a privacy breach.

6 Designated Access and Privacy Officer

A public body may designate one employee to serve as both their Designated Access Officer and Designated Privacy Officer. This model will serve mostly smaller public bodies that do not have the capacity to facilitate separation between the roles. If a public body chooses to appoint an employee of another public body as their Designated Privacy Officer, the Heads of both public bodies should contact the ATIPP Office for assistance with outlining the services using a template provided by the ATIPP Office.

It is strongly recommended for large public bodies that collect and hold a significant amount of personal information to appoint an employee of their own public body to carry out the privacy responsibilities.

7 Information Privacy Commissioner

The “COMMISSIONER” or Information and Privacy Commissioner (IPC) is a statutory officer created under the *ATIPP* Act. The Act also establishes the Office of the Information and Privacy Commissioner (OIPC).

The Commissioner is appointed by the Legislated Assembly and performs their statutory (legal) duties under the *Access to Information and Protection of Privacy* Act, as an Officer of the Legislative Assembly.

The Commissioner may receive and review complaints related to:

- Personal information corrections;
- Privacy complaints submitted by an individual or third party;
- Fee estimates;
- Waiver refusals;
- Refusals of access; and
- Abandonment of requests.

8 Delegation and Designation Process

Delegation of Duties and Powers

In accordance with the ATIPP Act, Heads of public bodies must formally delegate their ATIPP Act responsibilities using the Delegation Template provided by the ATIPP Office.

The Act expressly states Heads cannot delegate their power to a delegate. Once duties and powers are delegated by the Minister, Deputy Ministers or Designated Officers cannot re-delegate their responsibilities to another employee.

Any change in a previously delegated position requires the Head (Minister) to complete a new delegation form.

Signed delegation forms must be provided to the ATIPP Office and will be made public through the Access to Information Registry.

Designating Officers

Heads of Ministerial public bodies must formally designate the following statutory positions:

- Designated Access Officer (DAO)
- Designated Privacy Officer (DPO)

Any change in a previously delegated position requires the Head (Minister or delegate) to complete a new delegation form.

Heads may choose to delegate more than one employee as a Designated Access Officer, to ensure the public body has a standing alternate available.

As a reminder, only one Designated Privacy Officer may be appointed for each public body. Signed delegation forms must be provided to the ATIPP Office and will be made public through the Access to Information Registry.

See Delegation and Designation Form Templates provided at the end of this toolkit.

9 Core Competencies

Designated Access Officer

A Designated Access Officer is a highly technical, analytical position that involves attention to detail and the ability to interpret and apply law to records held by a public body.

These five core competencies represent the basic expectations and achievements of an individual who will be successful in the role.

It is important to choose one or more individuals who have experience interpreting legislation, researching policies and case law to effectively meet the requirements of this role under the ATIPP Act.

EDUCATED	<ul style="list-style-type: none">Public Administration, Information Management, Law or Paralegal Studies
EXPERIENCED IN LAW	<ul style="list-style-type: none">Can interpret and apply law to informationExperienced in access legislation and privacy legislation
RESEARCH AND ANALYSIS FOCUSED	<ul style="list-style-type: none">Researching, interpreting and analyzing legislation, policies and case law
CLIENT FOCUSED	<ul style="list-style-type: none">Client service orientated with excellent written and oral communication skills
INTERPERSONAL & COMMUNICATION SKILLS	<ul style="list-style-type: none">Prioritizes work and manages deadlines, able to work independently and collaboratively

Designated Privacy Officer

A Designated Privacy Officer is a confidential, investigatory position that involves tact, empathy, discretion and an in-depth understanding of privacy, information management and information technology.

It is important to choose an individual who has the skill set required to build capacity and relationships within their public body and to be viewed as a trusted individual.

Assessing and responding to a report of a suspected privacy breach, or auditing a program or activity's collection practices requires a strong, knowledgeable individual who can communicate the ATIPP Act's legal requirements to program staff.

Building a rapport is essential to the fact-finding and evaluation skills required for a successful breach assessment. Public body employees should understand the importance of the investigation and their legal responsibilities to provide assistance to complete the investigation.

These five core competencies represent the recommended knowledge and skills to ensure Designated Privacy Officer's can succeed in fulfilling the role's responsibilities.

EDUCATED	<ul style="list-style-type: none">• Privacy law, Information Management, Cyber Security, Public Administration
PRIVACY FOCUSED	<ul style="list-style-type: none">• Experience interpreting privacy legislation• Knowledge of Canadian Standard Association's Ten Privacy Principals
KNOWLEDGEABLE IN INFORMATION MANAGEMENT & IT	<ul style="list-style-type: none">• Knowledge and understanding of Information Management Principals (physical and electronic records)• Basic knowledge of Information Technology (IT) Security• Business process mapping
INVESTIGATION SKILLS	<ul style="list-style-type: none">• Ability to assess breaches, conduct investigations and gather evidence to make findings and recommendations
INTERPERSONAL & COMMUNICATION SKILLS	<ul style="list-style-type: none">• Ability to maintain relationships in a confidential setting, utilize diplomacy, empathy and tact while dealing with sensitive, confidential matters



Delegation of powers, duties and functions of the head of a public body under the *Access to Information and Protection of Privacy Act*

Page 1: Instructions

If the head chooses to delegate their powers, duties or functions to any employee, this form must be completed and provided to the ATIPP Office.

Purpose

This form is for the head of a statutory public body or entity to delegate any of their powers, duties or functions under the *Access to Information and Protection of Privacy Act* to another employee of a public body.

Section 88(c) of the *Access to Information and Protection of Privacy Act* states the head may delegate, in writing, any of their duties or powers under this Act (**except the power to delegate under this paragraph**) to an employee of a public body, subject to any conditions on the exercise of the delegated power or the performance of the delegated duty that the head considers necessary.

Completing the Form

To use this form, complete all required fields.

The highlighted section of this form is an optional delegation recommended by the ATIPP Office. If the head chooses not to delegate these functions, remove the highlighted portion before completing the form.

Once signed, forward the complete form to the ATIPP Office.

DELEGATION BY THE HEAD OF THE PUBLIC BODY

Name of public body	
---------------------	--

Pursuant to section 88(c) of the *Access to Information and Protection of Privacy Act*, I hereby delegate my powers, duties and functions as **head** of the public body to the _____, subject to the following conditions:

- (a) that the persons to whom my powers, duties or functions are delegated are bound in the exercise of those powers, duties or functions by the legislative and administrative limitations to which I am subject;
- (b) that the powers, duties or functions delegated to any person may also be exercised by another person who holds the person's position in an acting capacity to which he or she has been duly appointed;
- (c) that notwithstanding the delegation of my powers, duties or functions, I may exercise at any time any of the powers, duties or functions delegated.

Pursuant to section 88(c) of the *Access to Information and Protection of Privacy Act*, I hereby delegate the functions as **head** of the public body to the **Designated Access Officer**:

- (a) requests for extensions to the Access and Privacy Officer and the Information and Privacy Commissioner;
- (b) seeking a third party's view on granting access; and
- (c) consulting with the Access and Privacy Officer before an access request is refused.

The above delegation to the **Designated Access Officer** is subject to the following conditions:

(a) that the powers, duties or functions delegated to any person may also be exercised by another person who holds the person's position in an acting capacity to which he or she has been duly appointed;

(b) that notwithstanding the delegation of my powers, duties or functions, I may at any time, exercise any of the powers, duties or functions delegated.

This delegation is effective on and from the date shown below and shall remain in effect until revoked. This delegation may be revoked or amended from time to time.

_____ Head,	_____ Signature	_____ Date
_____	_____ Signature	_____ Date

CC: ATIPP OFFICE

DESIGNATION BY THE HEAD OF THE PUBLIC BODY

Name of public body	
---------------------	--

Pursuant to section 87(1)(a) of the *Access to Information and Protection of Privacy Act*,
I hereby designate _____ as the **Designated Access Officer**
of the public body, subject to the following conditions:

(a) that the persons designated with powers, duties or functions as this statutory officer are bound in the exercise of those powers, duties or functions by the legislative and administrative limitations to which they are subject;

(b) that the powers, duties or functions designated to this position may also be exercised by any person in an acting capacity to which he or she has been duly appointed;

This designation is effective on and from the date shown below and shall remain in effect until revoked. This delegation may be revoked or amended from time to time.

Head,

Signature

Date (Y/M/D)

CC: ATIPP OFFICE

DESIGNATION BY THE HEAD OF THE PUBLIC BODY

Name of public body	
---------------------	--

Pursuant to section 87(1)(a) of the *Access to Information and Protection of Privacy Act*,
I hereby designate _____ as the **Designated Privacy Officer** of
the public body, subject to the following conditions:

(a) that the persons designated with powers, duties or functions as this statutory officer are bound in the exercise of those powers, duties or functions by the legislative and administrative limitations to which they are subject;

(b) that the powers, duties or functions designated to this position may also be exercised by any person in an acting capacity to which he or she has been duly appointed;

This designation is effective on and from the date shown below and shall remain in effect until revoked. This delegation may be revoked or amended from time to time.

Head,

Signature

Date

CC: ATIPP OFFICE

DESIGNATION BY THE HEAD OF THE PUBLIC BODY

Name of public body	
---------------------	--

Pursuant to section 87(1)(a) of the *Access to Information and Protection of Privacy Act*,
I hereby designate _____ as the **Designated Access and Privacy Officer** of the public body, subject to the following conditions:

- (a) that the persons designated with powers, duties or functions as this statutory officer are bound in the exercise of those powers, duties or functions by the legislative and administrative limitations to which they are subject;
- (b) that the powers, duties or functions designated to this position may also be exercised by any person in an acting capacity to which he or she has been duly appointed;

This designation is effective on and from the date shown below and shall remain in effect until revoked. This delegation may be revoked or amended from time to time.

Head,

Signature

Date

CC: ATIPP OFFICE