ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT

Understanding mandatory and discretionary obligations

In the *ATIPP Act*, "must" or "may" is used to provide clarity on what sections of the Act are a mandatory or *discretionary* action. The Act uses the words to show which actions are absolute obligations, versus one in which it is up to the decision-maker to make a reasoned decision in whether to act under that section.

Mandatory = Must

The use of "must" in a provision or section of the *ATIPP Act*, shows a mandatory requirement for action.

For example: "the head of a public body **must** provide notice…" This wording shows the head is required to provide a notice in accordance with that section of the Act.

Discretionary = May

The use of "may" in a provision or section of the *ATIPP Act*, shows a discretionary use of the actions in that provision. This provides a choice to act or not act.

For example: "an individual **may** make a complaint to the commissioner…" This is a discretionary right for the individual to choose to submit a complaint, or not to complain.

Interpreting a section

Definitions

It is important to refer to the *ATIPP* Act Definitions in section 1, to understand a section of the Act.

For example:

Division 7 makes several references to "privacy breach". To understand what a privacy is, you would refer back to the definitions in section 1 of the Act.

Section 1 Definitions states: "privacy breach", in respect of personal information, means the theft or loss of, or unauthorized use, disclosure or disposal of, the personal information;

Section 1 Definitions provides further clarity by defining use, disclosure, disposal and personal information

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