

CHAPTER 7

GENERAL

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SECTION 118 Exercising the right of other individual

This provision allows for another person, under specific circumstances, to exercise any right or power under the Act that is conferred on an individual.

118(1) A right or power of an individual under this Act may be exercised by

118(1)(a) another individual, other than the commissioner, who has written authorization from the individual whose right or power is being exercised;

Under **subsection (1)(a)**, any right or power can be exercised with written authorization from the individual.

118(1)(b) an attorney acting under a power of attorney granted by the individual, if the exercise of the right or power relates to the powers or duties conferred on the attorney by the power of attorney;

Under **subsection (1)(b)**, any right or power can be exercised with power of attorney.

118(1)(c) a guardian appointed for the individual, or, if applicable, a substitute decision-maker under the Care Consent Act, if the exercise of the right or power relates to the powers or duties of the guardian or substitute decision-maker;

Under **section 118(1)(c)**, any right or power can be exercised by a guardian or substitute decision-maker.

118(1)(d) if the individual is deceased, the individual's personal representative, if the exercise of the right or power relates to the administration of the individual's estate; or

Section 118(1)(d), any right or power can be exercised by a deceased individual's personal representative if the power relates to the administration of the deceased individual's estate.

118(1)(e) if the individual is less than 19 years of age (referred to in this section as a "minor"), an individual who has lawful custody of the minor unless the head of the public body (to which the exercise of the right or power relates) determines, in accordance with subsection (2), that the exercise of the right or power by the individual on behalf of the minor would constitute an unreasonable invasion of the minor's privacy.

For an individual who is less than 19 years of age, any right or power can be exercised by an individual who has lawful custody and the head determines it would not be an unreasonable invasion of the individual's personal privacy.

Subsection (2)(a), this provision clarifies that when making a determination of an unreasonable invasion of personal privacy in provision 118(1)(e), a head may use criteria established in provision 70(5).

118(2) For the purpose of paragraph (1)(e)

118(2)(a) the factors described in subsection 70(5) are to be used by the head of the public body, with any necessary modifications, when making a determination under that paragraph; and

118(2)(b) if the head makes a determination that the exercise of a right or power under this Act on behalf of a minor by the individual who has lawful custody of the minor would constitute an unreasonable invasion of the minor's privacy, the head must, without delay after making the determination, provide a notice of the determination to the individual.

Subsection (2)(b) states that if the head determines and allows the individual to act on a minor's behalf would be an unreasonable invasion of privacy, the head must notify the individual.

Subsection 3 allows the individual who received notice to complain to the commissioner.

118(3) An individual who receives a notice under paragraph 2(b) may make a complaint to the commissioner in respect of the determination to which the notice relates by filing the complaint in accordance with section 90.

SECTION 119 Notice provided under this Act

This provision clarifies how notice is to be given to individuals when required by this Act.

119 If a person is required to provide a notice under a provision of this Act to another person

119(a) the person must provide the notice

119(a)(i) by personally delivering it to the other person,

This provision clarifies notice can be delivered directly to the individual.

119(a)(ii) if the person knows the mailing address or email address of the other person, by sending it by mail or email to the last known mailing address or email address of the other person,

The provision authorizes to the last known mailing address or email address of the individual.

119(a)(iii) if the person does not know a mailing address or email address of the other person, by delivering or sending the notice in the manner approved by the commissioner

under paragraph 111(1)(c) after a request by the person to do so has been made to the commissioner, or

This provision allows for the commissioner to determine how notice is to be provided if the mailing or email address is not known.

119(a)(iv) by delivering or sending it in any other manner prescribed as a manner in which a notice may be provided under that provision of the Act; and

119(b) the notice is considered to have been received by the person to whom it was delivered or sent on the expiry of the number of days prescribed for that purpose.

The provision allows for regulations to be created on other manners to deliver notices required under this Act. Please refer to the ATIPP Act Regulations for more information.

SECTION 120 Government of Yukon, public bodies protected from liability

This provision protects the public bodies, including the heads and employees, from liability if their actions were done in good faith.

Section 120 establishes that a public body, the head of a public body, an elected official of a public body or a person acting on behalf of the head or under the direction of the head (such as an employee) is protected from liability for certain acts or omissions under the Act.

LIABLE means bound or obliged in law or equity; responsible, answerable, chargeable, compellable to make compensation, satisfaction or restitution or bound to respond because a wrong has occurred.

GOOD FAITH is an intangible quality encompassing honest belief, the absence of malice and the absence of design to defraud or take advantage of something.

Section 120 protects an employee of a public body from adverse employment action as a result of properly disclosing information in accordance with the Act.

120 No legal proceeding for damages may be commenced or maintained against the Government of Yukon, a public body, the head or an employee of a public body, or any other person acting for or on behalf of the public body, in respect of anything done or omitted to be done in good faith

120(a) in the performance, or intended performance, of any duty under this Act; or

120(b) in the exercise, or intended exercise, of any power under this Act.

SECTION 121 Offences

This provision specifies which provisions, if contravened, would constitute an offence.

121(1) A person commits an offence if the person knowingly contravenes any of the following provisions:

121(1)(a) section 12 (prohibition – collection);

121(1)(b) section 19 (prohibition – use);

121(1)(c) section 23 (prohibition – disclosure);

121(1)(d) section 30 (securing personal information against privacy breach);

121(1)(e) section 103 (duty of confidentiality);

121(1)(f) subsection 113(1) (restricted authority to disclose information).

Subsection (2) states that if a researcher employed by a public body either commits an offence, or knowingly breaches a term or condition of an agreement that they have with a public body, this is constitutes an offence under the Act.

121(2) A person who has entered into an agreement with a public body a researcher under subsection 26(1) commits an offence

121(3) A person commits an offence if the person knowingly fails

121(3)(a) to comply with a summons to appear before the commissioner under paragraph 95(1)(a) that has been served on the person, or otherwise provided to the person in a manner provided for the provision of a notice under section 119; or

121(3)(b) to produce the information or records that the commissioner has compelled the person to produce in accordance with subsection 97(1).

121(4) A person commits an offence if the person knowingly obstructs the commissioner, a delegate of the commissioner or any other person in their performance of a duty or exercise of a power under this Act.

121(5) A person commits an offence if the person makes a false statement with the intent to mislead the commissioner, a delegate of the commissioner or any other person in their performance of a duty or exercise of a power under this Act.

121(6) A person commits an offence if the person alters, falsifies, conceals or disposes of information or a record, or directs another person to do so, with the intent

121(6)(a) to hinder, or impede the exercise of, the right of access to information under this Act; or

121(6)(b) to obstruct the provision of an accurate and complete response to an access request.

121(7) Section 3 of the *Summary Convictions Act* does not apply to this Act or the regulations.

SECTION 122 Penalties

This provision sets the penalties for knowingly violating the offences in provision 121.

121 A person who commits an offence under section 121 is liable to one or both of the following:

121(a) a fine of up to \$25,000;

121(b) a term of imprisonment for a period not exceeding six months.

SECTION 123 Limitation period for commencing prosecution

This provision places a limitation of two years for a prosecution to commence.

123 The time limit for laying an information to commence a prosecution for an offence under this Act is two years after the date on which the act or omission that is alleged to constitute the offence occurred.

SECTION 124 No offence

This provision clarifies that an offence is not committed when required to produce a record for the commissioner or delegate or other person in performing their duties under this Act.

124 A person does not commit an offence under any other Act by complying with a request or requirement to produce information or a record to the commissioner, a delegate of the commissioner or any other person acting under the direction of the commissioner, or any other person exercising a power under this Act to request the record or information.

SECTION 125 Regulations

These provisions pull together the regulations that can be made under this Act. These regulations have all been cited in the specific sub provisions throughout the Act. For a comprehensive list of the current regulations, please see the *ATIPP Act Regulations*.

125(1) The Commissioner in Executive Council may make regulations

125(1)(a) in respect of section 1

125(1)(a)(i) for the purpose of the definition “auditor”, the prescribing a person as an auditor,

125(1)(a)(ii) for the purpose of the definition “First Nation government”, prescribing an entity as a First Nation government,

125(1)(a)(iii) for the purpose of the definition “head”, prescribing an office or position as the office or position of the head of a public body that is a statutory body or an entity,

125(1)(a)(iv) for the purpose of the definition “ministerial body”, prescribing a statutory body as a program or activity of a ministerial body,

125(1)(a)(v) for the purpose of the definition “partner agency”, prescribing an entity as a partner agency,

125(1)(a)(vi) for the purpose of the definition “public body”, prescribing

125(1)(a)(vi)(A) for greater certainty, each ministerial body that is a public body,

125(1)(a)(vi)(B) a statutory body as a public body, or

125(1)(a)(vi)(C) an entity as a public body,

125(1)(a)(vii) for the purpose of the definition “public registry”, prescribing a registry (other than a court registry), register, roll, list or other thing as a public registry, or

125(1)(a)(viii) subject to subsection (3), for the purpose of the definition “publicly available information”, prescribing a type or class of personal information as publicly available information;

125(1)(b) subject to subsection (3), for the purpose of paragraph 3(c), prescribing a type or class of personal information that is not to be considered personal information;

125(1)(c) respecting the conduct of a privacy impact assessment under subsection 11(1);

125(1)(d) respecting the disposal of personal information under paragraph 14(4)(b) and subparagraphs 18(1)(c)(i) and 26(1)(b)(v);

125(1)(e) prescribing a purpose under paragraph 15(d);

125(1)(f) for the purpose of paragraphs 15(d), 16(2)(a), 21(e) and 25(d), prescribing the manner in which consent may be given or withdrawn;

125(1)(g) for the purpose of paragraph 28(2)(f), prescribing a type of service that may be provided as a part of a personal identity service;

125(1)(h) respecting the secure management of personal information under section 30, including establishing prohibitions in respect of the management of personal information;

125(1)(i) respecting the provision of a notice under paragraph 32(7)(b);

125(1)(j) for the purpose of paragraph 33(2)(c), prescribing a type of service that may be provided as a part of an information management service;

125(1)(k) respecting a personal information correction request under subsection 35(1);

125(1)(l) for the purpose of paragraph 39(d), prescribing a type or class of information or record as open access information;

125(1)(m) prescribing a fee that may be charged under section 42 for making a copy of open access information;

125(1)(n) respecting the submission of an access request under subsection 44(1);

125(1)(o) respecting the determination by the access and privacy officer about whether to accept an access request for processing under subsection 47(1) or refuse an access request for processing under paragraph 48(1)(b);

125(1)(p) respecting a request for information relevant to an access request under paragraph 51(a);

125(1)(q) respecting the making, contents and provision of an access information summary under section 53;

125(1)(r) respecting the determination of a cost estimate under subsection 54(1);

125(1)(s) for the purpose of section 55, respecting the cost for processing an access request, including prescribing any criteria that apply to the calculation of the cost;

125(1)(t) respecting the manner in which an applicant may agree to pay the prescribed cost or a portion of the prescribed cost for processing their access request under paragraph 55(1)(a);

125(1)(u) respecting an application for a waiver under paragraph 55(1)(b);

125(1)(v) respecting the granting of, or refusal to grant, a waiver under subsection 56(1);

125(1)(w) prescribing the manner in which a head must respond to an access request under paragraph 64(1)(a) or 64(7)(a);

125(1)(x) respecting the withholding of information or records under paragraph 64(1)(b);

125(1)(y) respecting the provision of access provided under section 65;

125(1)(z) for the purpose of subsection 68(1), paragraph 69(1)(a) and subparagraph 72(1)(a)(ii), prescribing the manner in which a public body may accept information in confidence;

125(1)(aa) for the purpose of paragraph 80(1)(b), prescribing the manner in which a public body confirms that it will hold in confidence information or the identity of an individual;

125(1)(ab) respecting the provision of a notice under paragraph 83(2)(a);

125(1)(ac) prescribing a power or duty for the purpose of paragraph 84(2)(b);

125(1)(ad) prescribing additional powers or duties of a designated privacy officer or a designated access officer;

125(1)(ae) respecting the conduct of a privacy compliance audit by the commissioner under paragraph 111(1)(b);

125(1)(af) for the purpose of subparagraph 119(a)(iv), prescribing the manner in which a notice under this Act may be provided; or

125(1)(ag) for the purpose of paragraph 119(b), prescribing the number of days on the expiry of which a notice is considered to have been received by the person to whom it was delivered or sent.

125(2) A regulation made under this Act may

125(2)(a) establish, and distinguish among, groups, types or classes, whether of persons, public bodies, entities or things;

125(2)(c) provide for modifications that are necessary to ensure that the differential application of this Act under paragraph (b) is consistent with the purposes of this Act;

125(2)(d) delegate any matter to, or confer discretion in respect of any matter on, a person; or

125(2)(e) define an expression used but not defined in this Act, or further define an expression defined in this Act.

125(3) Before the Commissioner in Executive Council makes a regulation under any of the following provisions, the minister responsible for this Act must, for a period of not less than 60 days, conduct a public consultation in respect of the proposed content of the regulation:

125(3)(a) subparagraph (1)(a)(viii) (publicly available information);

125(3)(b) paragraph (1)(b) (information not considered to be personal information).

SECTION 126 Ministerial orders specifying reputable public sources, etc.

This provision enables the minister responsible for this Act to authorize a source to be a “reputable public source” after conducting a 60-day public consultation. Identifying a “reputable public source” allows for flexibility for public bodies to collect information.

126(1) For the purpose of the definition “reputable public source” in section 1, after conducting a public consultation in accordance with subsection (2), the minister responsible for this Act may, by order, specify

126(1)(a) a source as a reputable public source; and

126(1)(b) the purpose for which the personal information collected from the source may be used by a public body.

Subsection 2 allows the minister to identify types or classes of information that cannot be “accepted in confidence” under 68. A 60-day public consultation is required. This provision provides balance and flexibility to ensure information in the public interest will be made accessible.

126(2) For the purpose of subsection 68(1), the minister responsible for this Act may, by order, specify a type or class of information to which subsection 68(1) does not apply despite having been accepted by a public body from a government or organization referred to in that subsection.

Subsection 3 allows the minister to identify types or classes of information that cannot be “accepted in confidence” under 69. A 60-day public consultation is required. This provision provides balance and flexibility to ensure information in the public interest will be made accessible.

126(3) For the purpose of paragraph 69(1)(a), the minister responsible for this Act may, by order, specify a type or class of trade secret, or of commercial, financial, scientific or technical information, to which paragraph 69(1)(a) does not apply despite having been accepted by a public body from a third party.

Subsection 4 allows the minister to identify types or classes of information that cannot be “accepted in confidence” under 80. A 60-day public consultation is required. This provision provides balance and flexibility to ensure information in the public interest will be made accessible.

126(4) For the purpose of paragraph 80(1)(b), the minister responsible for this Act may, by order, specify a type or class of information to which paragraph 80(1)(b) does not apply despite having been provided to a public body by an individual.

126(5) Before making an order under this section, the minister must, for a period of not less than 60 days, conduct a public consultation in respect of the proposed sources or types or classes of information that the minister is considering specifying in the order.

SECTION 127 Review of Act and report

This provision establishes a requirement to review the Act every six years. The minister responsible for this Act has one year to prepare and table the report to the Legislative Assembly.

127(1) The minister responsible for this Act must, at least once every six years after the day on which this section comes into force, undertake a review of the Act and every provision in any other Act that states that it prevails over this Act.

127(2) Within one year after the day on which a review is undertaken under subsection (1), the minister responsible for this Act must table a report on the review in the Legislative Assembly.