

# ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT MANUAL

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## CHAPTER 1

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### PART 1

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#### DIVISION 1 - INTERPRETATION

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### SECTION 1 Definitions

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1 In this Act

“access”, in respect of information to which access has been granted under paragraph 64(1)(a), means access to the information as provided in accordance with section 65;

**“access and privacy officer” means the employee of a public body appointed as the access and privacy officer under subsection 84(1);**

“access information summary”, in respect of an access request, means the written summary provided to the access and privacy officer under section 53 for the access request;

“access request” means a submitted under subsection 44(1);

“access to information registry” means the registry established under subsection 85(1);

“activation date”, in respect of an access request, means the day on which the access and privacy officer provides a copy of the access request to the head of the responsive public body under subparagraph 47(2)(a)(i);

“adjudicative information” means information collected, used, stored, processed or generated by an adjudicator, or an individual working for or on behalf of an adjudicator, in respect of a proceeding over which the adjudicator is presiding or has presided but does not include a decision (including reasons) or order made, or a direction given, by the adjudicator in respect of the proceeding; “adjudicator” means a person or body (other than a court) that

(a) is authorized under an Act of the Legislature or of Parliament to hear and determine a matter brought before them, and

(b) may, on conclusion of the hearing, make a decision that is legally-binding on a person whose rights are or may be affected by the decision;

“applicant”, in respect of an access request, means the person who submits the access request;

“Attorney General” means the minister who is the Attorney General of Yukon under section 3 of the Department of Justice Act and includes a lawyer, agent or delegate acting for or on behalf of the Attorney General;

“auditor” means

- (a) the individual appointed by Parliament as the Auditor General of Canada,
- (b) the individual appointed under the Financial Administration Act as the internal auditor, or
- (c) any other person prescribed as an auditor;

“business contact information”, of an individual, means information that makes it possible to contact the individual at their place of business and includes the individual’s name, position, title, business phone number and business email address;

“business day” means a day other than Saturday or a holiday;

“Cabinet” means the Executive Council and includes a committee of the Executive Council; “collection”, of personal information, includes gathering or obtaining the personal information but does not include the use, disclosure or management of the personal information; “commissioner” means

- (a) the individual appointed as the commissioner under subsection 110(3), or
- (b) if no appointment has been made under subsection 110(3), the Ombudsman;

“court” means a court that has jurisdiction in Yukon;

“court record” means a record contained in a court registry, or that is created or produced by or for a court in respect of a proceeding, and includes

- (a) a record of the dates on which the proceeding was heard or will be heard and the name of the judge who heard or is listed to hear the proceeding,
- (b) a record of a judgement in respect of the proceeding, including an order made or a direction given by the judge during the proceeding, and
- (c) a record admitted into evidence by the court during the proceeding;

“court registry staff” means the employees of a public body who provide support services to a judge or a court;

“court services information” means information about a program or activity of a public body that provides support services to a court and includes information about

## PART 1 DEFINITIONS

employment matters in respect of court registry staff but does not include judicial information or a court record;

“custodian” has the same meaning as in the *Health Information Privacy and Management Act* and includes an agent (as defined in that Act) of a custodian;

“data linking” means the combination of personal information contained in a dataset with personal information contained in another dataset for a purpose other than

(a) the purpose for which the personal information in each dataset was collected, and

(b) a purpose that is consistent with a purpose referred to in paragraph (a);

“data-linking activity” means a data-linking activity approved under section 29;

“dataset” means a grouping of data in which all or most of the data

(a) is held by a public body,

(b) consists of facts,

(c) is not the product of analysis or interpretation,

(d) is not a document referred to in section 9 of the *Archives Act*, and

(e) has not, except for its grouping, been organized, adapted or modified;

“department” has the same meaning as in the *Government Organisation Act*;

“designated access officer”, of a public body, means an employee designated under paragraph 87(1)(b) as a designated access officer for the public body;

“designated privacy officer”, of a public body, means the employee designated under paragraph 87(1)(a) as the designated privacy officer for the public body;

“disclosure”, of information, includes revealing or otherwise making the information known to a person other than the person who holds the information but does not include the collection, use or management of the information;

“disposal”, of information, includes destruction or deletion of the information;

“employee”, of a public body, includes

- (a) an individual who is
- (b) an employee of the public body, or of another public body that provides a service to the public body, appointed to a position in the public service pursuant to the Public Service Act,
- (c) a principal, vice-principal or teacher, or technical support staff, of the public body appointed to their position pursuant to the Education Act, or
- (d) an employee appointed to a position pursuant to the Cabinet and Caucus Employees Act for the purpose of assisting the minister responsible for the public body,
- (e) a service provider of the public body,
- (f) a director or officer of the public body, or
- (g) any other individual who provides a service to the public body, whether or not for compensation;

“First Nation government” means

- (a) a governing body established under the constitution of a Yukon First Nation,
- (b) the council of a band recognized under the Indian Act (Canada), or
- (c) an entity prescribed as a First Nation government;

“generally excluded information” means the information and records described in paragraphs 38(1)(a) to (o);

“head”, of a public body, means

- (a) in the case of a public body that is a ministerial body, the minister responsible for the public body,
- (b) in the case of a public body that is a statutory body, the individual who holds the office or position prescribed as the office or position of the head of the public body, or
- (c) in the case of a public body that is an entity, the individual who holds the office or position prescribed as the office or position of the head of the public body;

“hold”, in respect of information, means to have custody or control of the information;

“individual” includes a deceased individual;

“information” means information contained in a record;

“information management service” means a service described in an agreement made under subsection 33(3);

“integrated service” means an integrated service approved under section 27;

“judge” means a judge, deputy judge or justice of a court;

“judicial information” means

- (a) information collected, used, stored, processed or generated by a judge, or an individual working for or on behalf of the judge,
- (b) information about a judge, including
- (c) information about the support services provided to the judge by court registry staff,
- (d) information about the judge’s schedule in relation to proceedings,
- (e) information about the judge’s judicial training program, and
- (f) information about the judicial activity of the judge, including statistics about that activity prepared by or for the judge, and
- (g) information about, and the records of, the Judicial Council of the Territorial Court (established under the Territorial Court Act), including information and records related to the duties and powers of a member of the Judicial Council of the Territorial Court;

“law enforcement” means

- (a) policing, including criminal or security intelligence operations,
- (b) a police, security intelligence, criminal or regulatory investigation, including the complaint that initiates the investigation, that leads or could lead to a penalty or sanction being imposed, or
- (c) a proceeding that leads or could lead to a penalty or sanction being imposed;

“legal privilege” means solicitor-client privilege, litigation privilege or any other type of legal privilege (including a privilege of the law of evidence);

“manage”, in respect of personal information, includes retaining, storing, transferring, transmitting or disposing of the personal information but does not include collecting, using or disclosing the personal information;

“minister responsible”, for a department, means the minister appointed under the Government Organisation Act to preside over the department;

“ministerial body” means

- (a) the office of a minister responsible for a department,
- (b) the department over which the minister responsible presides, and
- (c) each statutory body prescribed as a program or activity of the ministerial body;

“municipality” means a municipality established under the Municipal Act and includes

- (a) the corporation established under that Act for the municipality, and
- (b) the council of the municipality;

“officer of the Legislative Assembly” means

- (a) the commissioner,
- (b) the Ombudsman,
- (c) the Chief Electoral Officer appointed under the Elections Act,
- (d) the Child and Youth Advocate appointed under the Child and Youth Advocate Act,
- (e) an individual appointed under the Conflict of Interest (Members and Ministers) Act as a member of the Conflict of Interest Commission (as established under that Act),
- (f) the Public Interest Disclosure Commissioner appointed under the Public Interest Disclosure of Wrongdoing Act, and
- (g) any other individual appointed under an Act as an officer of the Legislative Assembly;

“Ombudsman” means

- (a) the individual appointed as the Ombudsman under the Ombudsman Act, or
- (b) an individual appointed as an acting Ombudsman under the Ombudsman Act;

“open access information” means the information and records described in paragraphs 39(a) to (d);

“open access register”, of a public body, means the open access register established under paragraph 41(1)(a);

“partner”, in respect of a specialized service or a data-linking activity, means each public body, program or activity of a public body, or partner agency that is prescribed as a partner in the provision of the specialized service or the carrying out of the data-linking activity;

“partner agency” means

- (a) a government institution subject to the Privacy Act (Canada),
- (b) an organization operating in Yukon that is subject to the Personal Information Protection and Electronic Documents Act (Canada),
- (c) a public body, a government institution or an institution, as defined under an Act of a provincial legislature that has substantially the same effect as this Act,
- (d) a custodian,
- (e) a First Nation government and its employees, or
- (f) an entity prescribed as a partner agency;

“personal health information” has the same meaning as in the Health Information Privacy and Management Act;

“personal identity manager” means the public body prescribed under paragraph 28(1)(b) as the personal identity manager;

“personal identity service” means a personal identity service approved under subsection 28(1);

“personal information” means, subject to section 3, recorded information about an identifiable individual, including

- (a) their name,
- (b) their home, mailing or email address or phone number,
- (c) their age, sex, gender identity or expression, or sexual orientation,
- (d) their skin colour, fingerprints, blood type or any other genetic characteristic or biometric information,
- (e) their race, ethnicity or nationality,
- (f) information about their current and past physical or mental health, including their personal health information,

(g) information about their marital, family, education or employment status or history,

(h) information about their current or past

(i) political or religious beliefs, associations or activities,

(ii) amounts or sources of income, or

ii) income tax returns,

(i) information about

(i) an asset that they wholly or partially own or owned,

(ii) a liability for which they are or were wholly or partially liable,

(iii) a transaction or banking activity in which they are or were involved,

(iv) an assessment of credit-worthiness of which they are or were the subject,

(v) a discretionary benefit in the nature of income assistance, legal aid or another similar type of benefit that they are receiving or have received, or

(vi) a law enforcement matter of which they are or were the subject,

(j) a personal unique identifier that has been assigned to them,

(k) another individual's opinion or view about them, or

(l) their opinion or view about something other than their opinion or view about another individual;

“personal unique identifier”, of an individual, means an identifier that

(a) is assigned to the individual, and

(b) uniquely identifies the individual in relation to a public body;

“privacy breach”, in respect of personal information, means the theft or loss of, or unauthorized use, disclosure or disposal of, the personal information;

“privacy impact assessment” means a privacy impact assessment conducted in with accordance subsection 11(1);

“proceeding” means

(a) in respect of a court, a civil or criminal proceeding, or

(b) in respect of an adjudicator, the hearing of a matter over which the adjudicator is authorized under an Act of the Legislature or of Parliament to preside;

“program or activity”, of a public body, includes a service provided by the program or activity of the public body but does not include

(a) a program or activity prescribed not to be considered a program or activity of the public body, or

(b) each of the following that is provided by the public body:

(i) a specialized service,

(ii) a data-linking activity,

(iii) an information management service;

“protocol” means a protocol containing rules established by the access and privacy officer under subsection 86(1);

“public body” means

(a) a ministerial body,

(b) a statutory body prescribed as a public body, or

(c) an entity prescribed as a public body;

“public registry” means a registry (other than a court registry), register, roll, list or other thing that

(a) is established or maintained under an Act,

(b) contains personal information, and (c) is prescribed as a public registry;

“publicly available information” means personal information that is

(a) contained in a public registry,

(b) contained in a magazine, book, newspaper or other similar type of publication that is generally available to the public in print or electronic format, whether by purchase or otherwise, or

(c) of a type or class of personal information prescribed as publicly available information;

## PART 1 DEFINITIONS

“record” means a storage medium (including a written, graphic, electronic, digital, photographic or audio medium) in which information is contained and stored but does not include any software or mechanism used to store or produce the information;

“reputable public source” means a source specified in a ministerial order made under subsection 126(1);

“response date”, in respect of an access request, means the date determined under section 50 by which the head of a responsive public body must respond to the access request;

“responsive public body”, in respect of an access request, means

(a) if a copy of the access request has been provided to a head under subparagraph 47(2)(a)(i), the public body whose head has been provided the copy, or

(b) otherwise, the public body whose head would be required to respond to the access request if it were to be accepted for processing under subsection 47(1);

“service provider”, of a public body, means a person who, under a contract, provides a service for or on behalf of the public body and includes an employee or agent of the service provider;

“sheriff” means the individual appointed under the Supreme Court Act as the sheriff;

“significant harm” means

(a) in respect of a privacy breach, bodily harm, personal humiliation, reputational or relationship damage, loss of employment, business or professional opportunities, financial loss, negative effects on a credit rating, or damage to or loss of property, or any other similar type of harm,

(b) in respect of subsection 83(1), harm caused by a serious environmental, health or safety hazard, or

(c) in respect of paragraph 64(3)(a), a harm of a type referred to in paragraph (a) or (b);

“specialized service” means an integrated service or a personal identity service;

“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;

“third party”, in respect of an access request, means a person other than the applicant or the responsive public body;

“use”, in respect of personal information, includes accessing, adapting, compiling, copying, modifying, organizing or reviewing the personal information but does not include collecting, disclosing or managing the personal information;

“Yukon University” means the corporation continued as Yukon University under the Yukon University Act;

“Yukon First Nation” has the same meaning as in An Act Approving Yukon Land Claim Final Agreements.

## DIVISION 1 - INTERPRETATION

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### SECTION 2 Information not considered to be adjudicative information

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This section describes what information does **not** fall under the definition of “adjudicative information” as found in Section 1 under this Part of the Act.

**2** For the purpose of the definition “adjudicative information” in section 1, information of the following types, as it relates to a person or body that may preside as an adjudicator, is not considered to be adjudicative information:

**2(a)** information relating to the person’s or body’s exercise of a power to grant, issue or otherwise provide a licence, permit or other type of authorization, or a discretionary benefit, under an Act;

**2(b)** information relating to the person’s or body’s provision of advice or a recommendation to Cabinet or a minister;

**2(c)** information relating to a clerical or secretarial matter not directly related to a proceeding over which the person or body is presiding or has resided as an adjudicator.

“**ADJUDICATIVE INFORMATION**” means information collected, used, stored, processed or generated by an adjudicator, or an individual working for or on behalf of an adjudicator, in respect of a proceeding over which the adjudicator is presiding or has presided but does not include a decision (including reasons) or order made, or a direction given, by the adjudicator in respect of the proceeding.

This distinction is made to prevent information sitting with adjudicative bodies or adjudicators from being withheld when it is not directly related to an adjudication. It provides more clarity regarding access to records for bodies with multiple roles, or where one individual has two separate functions (eg. advisory vs. adjudicative, or permitting vs. permitting appeals). The kind of information related to adjudication that **would be** accessible includes:

- a. The exercise of a power of an adjudicator or adjudicative body to grant permits, licenses, authorizations or discretionary benefits;
- b. the provision of advice by an adjudicator or an adjudicative body, or the making of recommendations to Cabinet or a minister;
- c. clerical or secretarial matters not directly related to an adjudicative proceeding.

A person is acting in a quasi-judicial capacity if they are required to:

- investigate facts, hear all parties to the matters at issue, weigh evidence or draw conclusions as a basis for their action;

- exercise discretion of a judicial nature; and
- render a decision following the consideration of the issues rather than simply making a recommendation.

What powers are granted and how are they used? How are general administrative matters handled? Access to such information allows applicants the ability to examine the standards, duties, responsibilities and output of the adjudicative office, or person acting as an adjudicator.

While case files on an adjudication are generally excluded under **section 38(d)**, advice and recommendations of adjudicators or adjudicative bodies may be requested under the Act. These records would most likely fall under the provisions of **sections 67** (advice) and/or **section 74** (Cabinet confidence).

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### **SECTION 3 Information not considered to be personal information**

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This section describes what information does **not** fall under the definition of “**PERSONAL INFORMATION**” as found in section 1, definitions of the ATIPP Act.

This distinction makes available personal information that is considered to be of public nature, such as business contact information. As well, it provides an additional opportunity to prescribe other types or classes of an individual’s information as personal. The definition of personal information does not include information about a sole proprietorship, partnership, unincorporated association or corporation.

**3** For the purpose of the definition “personal information” in section 1, the following is not considered to be the personal information of an individual:

**3(a)** the business contact information of the individual;

Business contact information of an individual that is defined under the Act as information that makes it possible to contact the individual at their place of business and includes the individual’s name, position, title, business phone number and business email address;

**3(b)** in the case of an individual who is or was a service provider of a public body, or who is or was an employee or agent of the service provider, the terms of the contract between the public body and the service provider, including, as specified in the contract, the individual’s name and, if applicable, their position with the service provider;

**3(c)** personal information of the individual of a type or class of personal information prescribed as information that is not to be considered personal information.

This would not include the personal information contained in a record granting a discretionary benefit such as income assistance, legal aid, or other similar type of benefit (See **section 70(4)(d)**).

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**SECTION 4 Not public bodies**


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This provision clarifies who and what is **NOT** a public body, nor should be considered as an employee of the public body and therefore exempt from the scope of the Act.

**4(1)** For greater certainty, each of the following is not considered to be a public body, an employee or agent of a public body, or a program or activity of a public body:

**4(1)(a)** a court

**“COURTS”** means a court that has jurisdiction in the Yukon. Courts include the Territorial Court of Yukon, the Supreme Court of Yukon, the Court of Appeal of Yukon, and the Small Claims Court of Yukon.

**4(1)(b)** a judge;

**“JUDGE”** means a judge, deputy judge or justice of a court.

**4(1)(c)** the office of a member of the Legislative Assembly;

**4(1)(d)** the office of an officer of the Legislative Assembly;

**“OFFICER OF THE LEGISLATIVE ASSEMBLY”** means the commissioner; the Ombudsman; the Chief Electoral Officer appointed under the *Elections Act*; the Child and Youth Advocate appointed under the *Child and Youth Advocate Act*; an individual appointed under the *Conflict of Interest (Members and Ministers) Act* as a member of the Conflict of Interest Commission (as established under that Act); the Public Interest Disclosure Commissioner appointed under the *Public Interest Disclosure of Wrongdoing Act*; and any other individual appointed under an Act as an officer of the Legislative Assembly.

The Executive Council Office (ECO) is a part of the ministerial public body, but the office of a Member of the Legislative Assembly (MLA) does not fall under this definition. This means some records of the Members of the Executive Council (Cabinet Members) will fall within the scope of the Act, as it relates to their duties, and other records will be exempt.

For greater certainty, the records of Members of the Executive Council that relate to their duties in Cabinet and in the administration and operation of a ministerial public body, are within the scope of the Act, but records related to their duties as an MLA are not.

**Subsection 2** The Commissioner in Executive Council may prescribe a program or activity of a ministerial public body, but **not** as a part of the ministerial public body through ATIPP Act Regulations. Please see Regulations for more detail. This provision provides Cabinet with the flexibility to decide whether, based on a consideration of a particular circumstance, a program or activity (i.e. a division, unit, branch or service of a public body) should be carved out of a

public body so that Act does not apply to it. Cabinet may decide, in respect of a program or activity that resource or administrative reasons necessitate this.

**4(2)** For the purposes of this Act, the Commissioner in Executive Council may prescribe a program or activity of a public body that is not to be considered as a program or activity of the public body.

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## **SECTION 5 Public body includes head and employees**

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This provision provides for more precision (eg. narrowing) in respect of the application of the expression “public body”. This is particularly important in respect of the privacy provisions in Part 2 (protection of personal information). Precision in respect of these applications is important because the rules in Part 2 provide authority for a public body to collect, use and disclose personal information. This ensures narrow application of this provision and is important in order to maintain the intent behind those rules—limited and strict application of those rules, given the sensitivity of the information, to which those rules relate.

“**PUBLIC BODY**” means a ministerial body, a statutory body prescribed as a public body, or an entity prescribed as a public body.

**5(1)** Unless the context indicates otherwise, a reference in a provision of this Act to a public body is to be read as including a reference to

**5(1)(a)** the head of the public body;

**5(1)(b)** each program or activity of the public body to which the provision applies; and

**5(1)(c)** each employee who has the authority under the provision to act for or on behalf of the public body.

“**HEAD**” of a public body means:

- in the case of a public body that is a ministerial body, the minister responsible for the public body
- in the case of a public body that is a statutory body, the individual who holds the office or position prescribed as the office or position of the head of the public body, or
- in the case of a public body that is an entity, the individual who holds the office or position of the head of the public body.

This substantive provision sets out which position or office of a public body is to be the head of that public body.

“**MINISTERIAL BODY**” means the office of a minister responsible for a department, the department over which the minister responsible presides, and each statutory body prescribed as a program or activity of the ministerial body.

If the public body is a ministerial body, the head is the responsible minister. **“MINISTER RESPONSIBLE”**, for a department, means the minister appointed under the *Government Organisation Act* to preside over the department.

The office of a minister responsible is included as the first component of this type of public body, as opposed to simply the minister, because public bodies are entities and not persons. Rather the minister is the head of the public body (as provided for under the definition of “head”).

If the public body is a statutory body or another type of entity, the head will be the individual who holds the position or the officer prescribed for that purpose.

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

The establishment of the position of the head in this Act is a major shift that has been made to increase accountability and expand/clarify the scope of the Act. This Act will apply to information and records held by the head and employees of the office of a minister but for exceptions to access in respect of personal and constituency matter, and any other applicable exception. For example, a Cabinet record exception.

**“CABINET”** means the Executive Council and includes a committee of the Executive Council.

Each statutory body prescribed as a program or activity of the ministerial body under subparagraph **125(1)(a)(iv)** enables Cabinet to address circumstances where due to the functions of a statutory body there is a desire to have this Act apply to that statutory body but the resource limits of that statutory body make it unfeasible to prescribe it as a stand-alone public body. Cabinet can prescribe that statutory body as a program or activity of the ministerial body for the purpose and application of this Act. The new Act would then, on the making of that regulation prescribing the statutory body as a program or activity of a ministerial body, apply to the statutory body as if it were a program or activity of that ministerial public body.

For clarity, the heads for each public body are prescribed through *ATIPP Act Regulations*. Please see the regulations for more information.

As will be noted under **section 9**, if Cabinet wishes for only parts of the Act to apply to a particular statutory body, and therefore not prescribe the public body as a part of a ministerial body or prescribe it as a stand-alone body, Cabinet has a third alternative approach under section 9. Through regulation, Cabinet can apply only specific provisions of the Act (as determined by Cabinet) to the statutory body as if it were a public body. This approach under section 9 is also an option in respect of entities.

**Subsection 2** describes how a public body may hold information that may be subject to an access request. It clarifies the relationship between the public body, the head and its employees in respect of the holding of information on behalf of the public body.

**5(2)** For greater certainty, a reference in a provision of this Act to

**5(2)(a)** the holding of information or a record by a public body is to be read as including a reference to the holding of the information or record by the head or an employee of the public body who holds it for or on behalf of the public body; or

**5(2)(b)** the holding of information or a record by the head or an employee of the public body is to be read as a reference to the head or employee holding the information or record for or on behalf of the public body.

A record is in the possession of a public body if they are physically holding or retaining the record. For example: work emails, records on an employee's computer at work (electronic); records in an employee's office filing cabinet; central filing systems; public body's premises etc.

The most common situation where a public body may have control, but not custody, of a record is in the case of contracted services. The record may have been created by and in the possession of the contractor, but the public body has control of the record because it relates to a service performed by the contractor on behalf of the public body. In most cases, matters of custody and control would be addressed in the terms and conditions of the contract, or a related information management agreement.

## DIVISION 2 - PURPOSES AND APPLICATION OF ACT

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### SECTION 6 Purposes

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This section describes what the purposes and application of the new Act entail. This includes how personal information is collected, disclosed, corrected and the security measures used in these processes. This also includes how information is classified, how information is shared with the public upon request (for the intention of transparency with government programming etc.), and how the Office of the Information and Privacy Commissioner (OIPC) is able to monitor public bodies' compliance with this Act.

The purposes of this Act are:

- 6(a)** to protect the privacy of individuals by controlling and limiting the collection, use and disclosure of personal information by public bodies;
- 6(b)** to require public bodies to implement security measures designed to prevent privacy breaches in respect of the personal information that they hold;
- 6(c)** to ensure that individuals have access to their personal information held by public bodies and have a right to request correction of it;
- 6(d)** to require public bodies to make particular types or classes of information openly accessible so that an access request is not required to access those types or classes of information;
- 6(e)** to provide the public with a right to access information held by public bodies (subject to specific exceptions) in order to ensure government transparency and to facilitate the public's ability to meaningfully participate in the democratic process; and
- 6(f)** to provide the commissioner with powers and duties that enable the commissioner to monitor public bodies' compliance with this Act and ensure that public bodies' decision-making is conducted in accordance with the purposes of this Act and that their administration is in accordance with the purposes of this Act.

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### SECTION 7 Act does not affect certain powers and rights

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This section of the Act clarifies what the ATIPP Act does **not** affect or restrict existing powers established under other laws, for example, the powers of a court to compel information.

This Act does not:

- 7(a)** replace or limit other ways in which an individual may access publically available information;

**7(b)** prohibit management of records in accordance with another Act of Yukon or Canada;

**7(c)** limit information legally available to a party involved in a proceeding;

**7(d)** affect or limit the power of a court, adjudicator or officer of the Legislative Assembly to exercise their powers to compel a witness to testify or produce documents.

This section clarifies that even though the *ATIPP Act* regulates the manner in which an individual may access information, it only does so within the scope of the Act.

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### **SECTION 8 Act prevails unless expressly displaced**

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This section establishes that this new Act is paramount to all other laws. If a conflict exists between the application of a rule under this Act and another Act, this Act overrides the other one. The exception to this is, if the alternate Act specifically states that its rule prevails over this Act (or a provision of this Act).

**8** If a provision of this Act is inconsistent with or in conflict with a provision of another Act, the provision of this Act prevails unless the other Act expressly provides that it, or a provision of it, prevails despite this Act.

- Under another Act; (for example the *Statistics Act* is paramount to the *ATIPP Act*), or
- a regulation under the *ATIPP Act*. Please refer to the *ATIPP Act Regulations* for more information.

Several Yukon acts contain paramountcy provisions that state a section or sections of an act override the *ATIPP Act*. When interpreting paramountcy provisions, public bodies must interpret the provisions narrowly, as stated in the Act.

For example, Yukon's *Land Titles Act* states under section 210 The *Access to Information and Protection of Privacy Act* does not apply to the records kept by the registrar under **Part 2, Division 3**. Part 2 Division 3 are **Records to be kept by Registrar**, which as specified in the Act to include the Daybook, Register of Titles, General Register, Form of Records and Seal of Office. This provision provides a legal mechanism for the Land Titles Branch to make information available to the public.

However, the *Land Titles Act (LTA)* paramountcy provision only applies to that specific part of the Act. It does not grant all activities under the Act as exempt from the *ATIPP Act*.

**Public bodies considering making any provision of an act or regulation paramount to the *ATIPP Act*, must consult with the Access and Privacy Officer, *ATIPP Office* and Office of the Information and Privacy Commissioner during the consideration process.**

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**SECTION 9 Application to non-public bodies**

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This provision provides Cabinet with a power by which it may, if it chooses through the making of a regulation, apply provisions of this new Act (again the provisions it chooses) to a statutory body, office or entity, or a class of those things without (or in substitution for) prescribing (making) it a public body.

This mechanism provides flexibility in to Cabinet in its decision-making process so that the different contexts and operating constraints of different types of public bodies, offices or entities can be considered and accommodated without needing to prescribe these types of things as public bodies, which would mean that flexibility of differential application would be limited because the Act wholly applies to each and every public body.

**9(1)** The Commissioner in Executive Council may, by regulation, make a provision of this Act applicable to a statutory body, office or entity that is not a public body as if it were a public body.

**9(2)** A regulation made under this section may

**9(2)(a)** establish, and distinguish among, types or classes of statutory bodies, offices or entities;

**9(2)(b)** apply different provisions to this Act to different types or classes of statutory bodies, offices or entities; or

**9(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.