

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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