Module 5
Access to Information and Protection of Privacy

Municipal Conduct Act Orientation Training

Introduction

The information in these slides is for training purposes only. It should not be relied upon for legal interpretation. Please consult the legislation, the ATIPP Office and, as required, legal counsel, for full interpretations of the Act.

This is an abridged version of the training designed to provide an overview for municipal councils.

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Background – ATIPPA, 2015

The Access to Information and Protection Act, 2015

- Gives the public a right of access to records
- Contains limited exceptions to access
- Gives an individual a right of access to, and correction of, their own personal information
- Prevents unauthorized collection, use and disclosure of personal information
- Provides for an oversight agency (the Office of the Information and Privacy Commissioner (OIPC)

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ATIPP Office

Education & Training

ATIPP Coordinators
Core government employees
Government Executive
Communities of Practice

Policies & Procedures

Access to Information
Protection of Privacy
Municipal Guidelines

Advice & Guidance

Serves as helpdesk
Answer questions
Support on ATIPP requests

Privacy Breaches

Develop breach protocol
Assist in responding to breach
Receive breach reports

Privacy Assessments

Assess privacy impacts
Develop templates/guidance

Statistical Reporting

Collect, maintain, compile and release statistics on requests

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Office of the Information and Privacy Commissioner (OIPC)

- Independent Statutory Office
- Receive privacy breach reports from public bodies
- Investigate access to information and protection of privacy issues
- Audit public bodies for access and privacy compliance

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Access to Information

Access to Information Requests

- Formal vs. Informal Requests.
- Anybody can make a request; name of applicant must usually remain anonymous.
- If you receive a formal ATIPP request send it to your ATIPP Coordinator immediately.
- Once a request is made, no records responsive to the request can be destroyed.
- Except for limited circumstances, records in a public body's custody and control are responsive to an ATIPP Request.
- Protection from liability.

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Time Limits, Extensions and Disregards

- 20 business days (failure to respond deemed refusal).
- May be extended with prior approval from OIPC.
- Timelines are tight. If your ATIPP Coordinator asks you for records, must make a priority.
- Disregards may be sought from the OIPC in specific circumstances (frivolous, vexation, unreasonable interference with operations, etc.)

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Costs

- No cost to submit a request
- No costs charged for personal information requests
- Can charge costs after
  - First 10 hours of locating records (local government body)
  - First 15 hours of locating records (public bodies)

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Costs

The circumstances where you can charge fees are very limited. You can contact the ATIPP Office for more information if:

- You expect to spend a lot to time finding records
- You must pay significant fees for shipping a request
- You must pay significant fees to reproduce a record (e.g. Large maps)

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Records

Applies to records in **custody** or **control** of a public body


Emails


Photographs


Voicemails, texts, BBMs


Post-it notes


Paper documents


Journal books

Calendar entries


Videos


Maps

Electronic records


Draft documents

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Role of Individuals

Head of public body

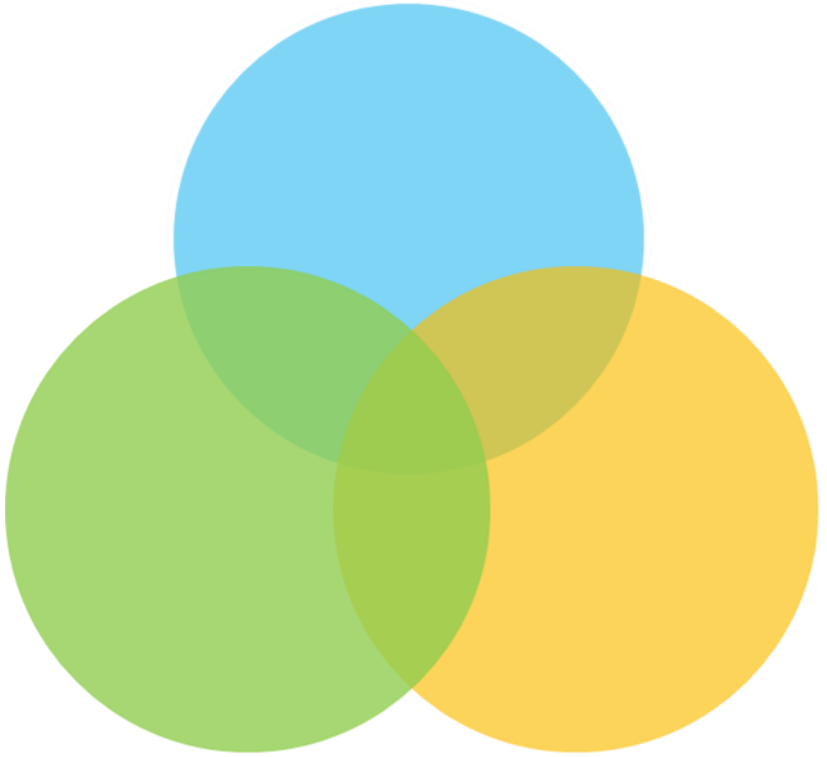
Responsible for decisions under ATIPPA

ATIPP coordinator

Responsible for management of requests

Focal point of access and privacy within public body

Protect applicant identity



Public body staff & elected officials

May have custody/control of records responsive to a request

Often responsible for collecting, using, disclosing personal information for programs & services

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Role of ATIPP Coordinator

- Responsible for management of requests made under the **Act.**
- No official other than ATIPP coordinator should be involved in request unless consulted for advice or giving assistance in obtaining records.
- Protect identity of applicants throughout request process.
- Duty to Assist.

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Head of Public Body

- The municipality must designate person as head of public body for purposes of **ATIPPA, 2015**.
- Once designated, the municipality must notify the ATIPP Office.
- The head of the public body is responsible for decisions under the Act.
- Review outgoing requests, without knowledge of applicant.

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Gathering Records

- Search may include:


Shared directories


Computers/laptops


Paper files


Websites


Blackberries


Notebooks


Email systems


Flash drives


Tablets

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Personal Devices / Emails

- Should not be used to conduct public body business.
- Records relating to work of public body created, stored, or received on a personal device, email account, etc. are still subject to **ATIPPA, 2015**.

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Exceptions

There are two categories of information which either can or must be withheld in context of an access to information request.

- Mandatory – must be withheld
- Discretionary – may be withheld

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Mandatory Exceptions

- Cabinet confidences (s.27)
- Information from a workplace investigation (s.33)
- Disclosure harmful to business interests (s.39)
- Disclosure of personal information (s.40)
- Disclosure of House of Assembly Service and Statutory Office Records (s.41)

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Discretionary Exceptions

- Local public body confidences (s.28)
- Policy advice or recommendations (s.29)
- Legal Advice (s.30)
- Disclosure harmful to law enforcement (s.31)
- Confidential evaluations (s.32)

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Discretionary Exceptions

- Disclosure harmful to intergovernmental relations/negotiations (s.34)
- Disclosure harmful to financial/economic interests of public body (s.35)
- Disclosure harmful to conservation (s.36)
- Disclosure harmful to individual or public safety
- Disclosure harmful to labour relations interest of public body as employer (s.38)

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Disclosure in Public Interest

Must balance reason for exception (why the information must be protected) against public interest in preserving fundamental democratic and political values:

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Offences

A person who **willfully:**

- Obstructs the commissioner or another person performing duties or exercising powers under this Act
- Destroys a record or erases information in a record that is subject to this Act, or directs another person to do so, with the intent to evade a request for access to records; or
- Alters, falsifies or conceals a record that is subject to this Act, or directs another person to do so, with the intent to evade a request for access to records.
- Is guilty of an offence and liable, on summary conviction to a fine of not more than $10,000 or to imprisonment for a term not exceeding 6 months, or both.

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Protection of Privacy

Personal Information Defined

Personal information means recorded information about an identifiable individual, including:

- Individual's name, address, or telephone number
- Individual's race, national or ethnic origin, religious or political beliefs
- Individual's age, sex, sexual orientation, marital status
- An identifying number, symbol or other particular assigned to the individual

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Not an Unreasonable Invasion of Privacy

- Travel Expenses
- Company information
- Attendance at a public event
- Financial details of a contract
- Basic permit and license information
- Where the individual consents to disclosure
- Positions, functions, remuneration of a public employee/official)
- Opinions as an employee or official(unless about someone else)

Presumed to be an Unreasonable Invasion of Privacy

- Personal evaluations
- Medical or mental health information
- Racial, ethnic, religious, political beliefs
- Employment, criminal, or educational history

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Unsure? (Grey areas)

If you are unsure consider the following:

- Is the information readily publicly available
- Would it cause unfair damage to a reputation
- Was the information given in confidence
- Was it important to ensure public scrutiny
- Will it affect public health and safety
- Is the person deceased

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Collection of Personal Information

Collection

- **To collect** means to assemble or accumulate personal information.
- **Collection** occurs when a public body gathers, acquires, receives, obtains or compiles personal information and creates a record of that personal information
- Minimum amount necessary
- Generally, direct collection from individual (some exceptions)

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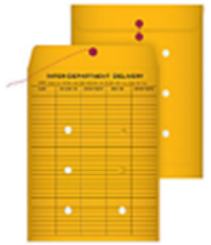
Collection Methods

- Forms, applications



- Information from another public body

- Interviews, questionnaires, surveys, or polls

- Collected by contractor/third party

- Correspondence, including unsolicited letters and resumes

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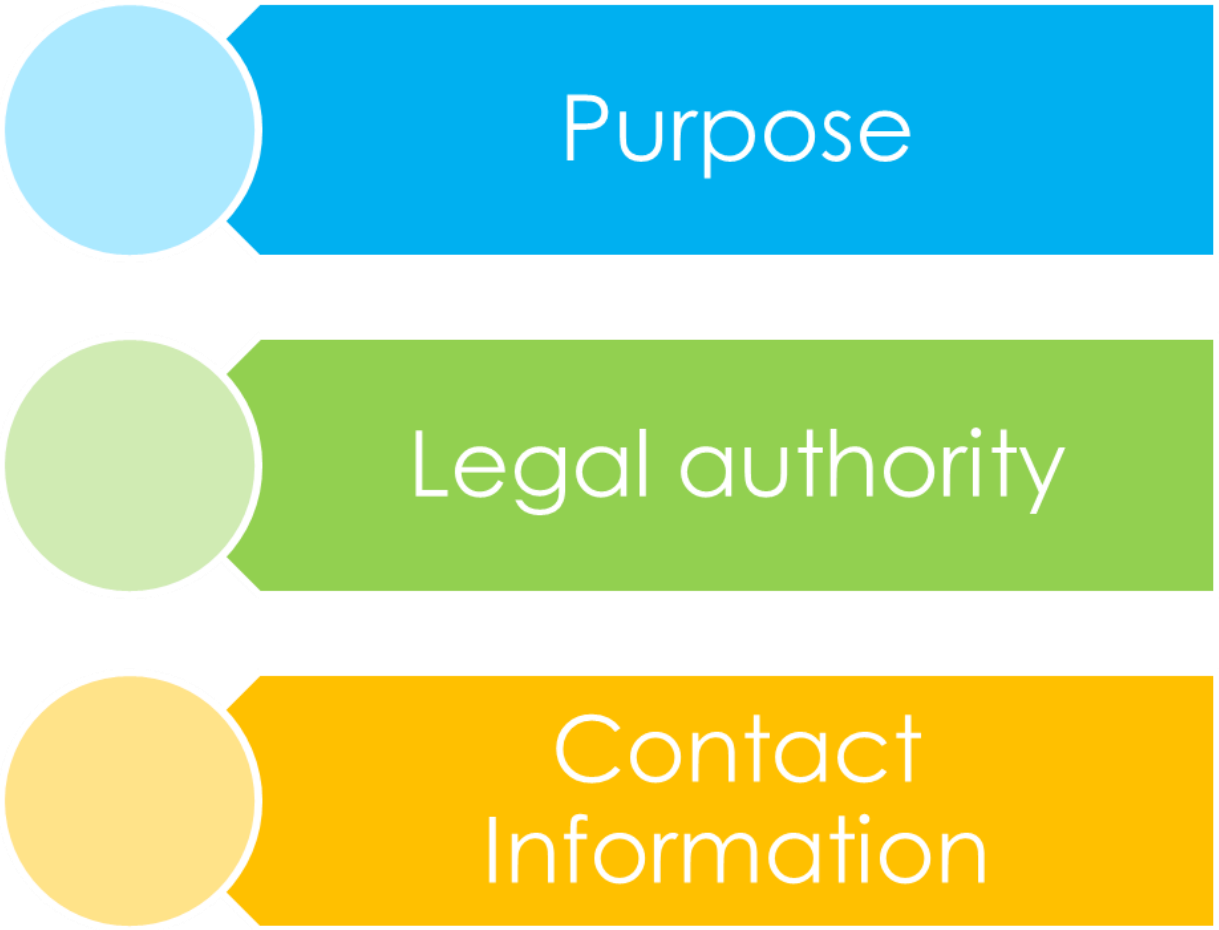
Privacy Notice



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Privacy Notice Example

Privacy Notice

Under the authority of the *Access to Information and Protection of Privacy Act, 2015*, personal information is being collected and will be used for the purpose of responding to your request for information.

Any questions or comments can be directed to the Town of Torbay at (709)123-4567 or info@torbay.com

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Consent

Generally, you need an individual's consent before collecting, using or disclosing their personal information.

- Confirm individual giving consent is individual information is about
- Ensure individual gives informed consent
- Seek written consent
- Seek verbal consent if written cannot be obtained
- Allow individual to withdraw consent at any time

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Use and Disclosure of Personal Information

Use of Personal Information

- **Using personal information** means using it internally (within the department or agency) for administering a project or program.
- Using personal information is different from disclosure of personal information.
- **Disclosing personal information** means showing, sending, telling or giving another department, organization, or individual(s) the personal information in question.

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Use of Personal Information

- Generally, use information only for purpose it was collected or a “consistent purpose”.
- Even within an organization, you should only access information on a need-to-know basis.
- Example: Personal Information in Taxi Driver’s Applications
  - ✓ Purpose: Assessing applications
  - ✓ Purpose: Notice of change in taxi by-laws
  - X Purpose: Recreation program registration by the taxi driver.

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Disclosure of Personal Information

You may disclose personal information only if it's:

- For a consistent use.
- When an individual has consented.
- For reasons for which it was collected.
- For complying with, or in accordance with an Act.

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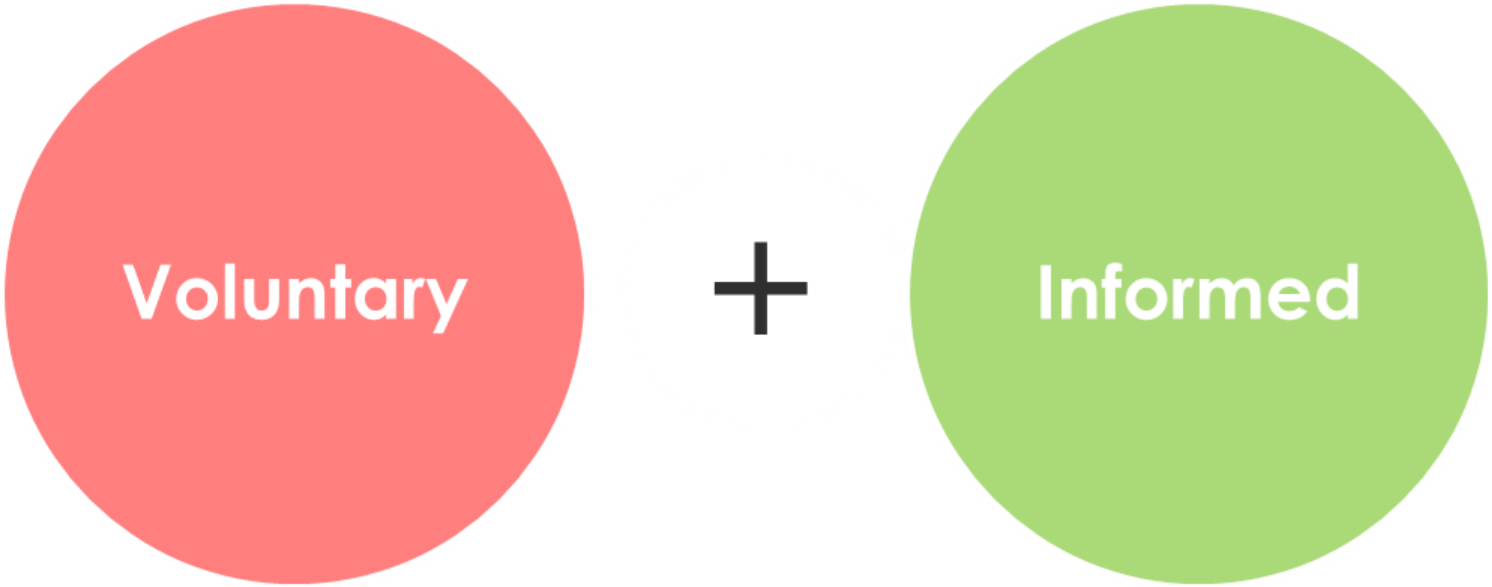
Disclosure with Consent

Consent should be clear and specific and public body should be satisfied consent is



Disclosure without Consent

- Examples:

Research/ statistical purpose

Archival/ historical purpose

Law enforcement

Health/safety of a person

Complying with an Act

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Protection of Personal Information

Protect Personal Information

You must take reasonable steps to ensure:

- Personal information must protected against theft, loss and unauthorized collection, access, use, disclosure
- Records containing personal information should be protected against unauthorized copying or modification
- Records containing personal information must be retained, transferred and securely disposed of

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Administrative Safeguards

- Limit access to employees and officials who need information to carry out their duties.
- Train employees on privacy, security, and consequences of non-compliance.
- Ensure former officials and employees do not have continued access to information.
- Verify an individual’s identity when providing personal information.

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Physical Safeguards

- Be careful using fax and emails.
- Lock filing cabinets, offices and storage facilities.
- Limit information provided, to only what is necessary.
- Store information in secure areas with limited access.
- Shred documents with private and confidential information.
- Ensure assets are secure when employees are out of the office.

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Technical Safeguards

- Backup files
- Password protection on all assets and networks
- Control access to information using role-based access.
- Use encrypted methods of transporting sensitive electronic data.
- Ensure copiers, fax machines and scanners, are professionally wiped prior to disposal.

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Privacy Breaches

Privacy Breaches

A **privacy breach** occurs when there is an unauthorized collection, use, disclosure, access or disposal of personal information.

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Responding to a Privacy Breach

1. Contain the Breach
2. Evaluate risks
3. Notification
4. Prevention

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Notification

- Notify ATIPP Coordinator immediately!
- All privacy breaches **must** be reported to Office of the Information Privacy Commissioner .
- Breaches should also be reported to the ATIPP Office.

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Offences

- An offence occurs when a person willfully collects, uses or discloses personal information in contravention of this Act.
- An offence occurs when a person willfully attempts to gain or gains access to personal information in contravention of this act or regulations .
- A person could be found guilty of an offence and liable, on summary conviction, to a fine of not more than $10,000 or to imprisonment for a term not exceeding 6 months, or to both.

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Municipal Public Documents

Municipal Public Documents

- Section 215 of the **Municipalities Act, 1999** includes a list of documents.
- These documents must be available for public inspection.
- A person may photocopy these documents if you have copying equipment available.
- You may charge for the costs of making copies.

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Municipal Public Documents

- Adopted minutes of council
- Assessment rolls
- Regulations (a.k.a. bylaws)
- Municipal plans
- Opened public tenders
- Financial statements
- Auditor's reports
- Adopted budgets
- Contracts
- Orders
- Permits
- All other documents tabled or adopted by council at a public meeting.

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Municipal Public Documents

- Documents must be available during business hours.
- Personal information can/should be severed where appropriate.
- Some documents may be authorized to allow inspection, not necessarily authorized to disclose.
- A person may submit an access to information request for such records, but are not required to.

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Resources

Manuals

- The following resources are available on the ATIPP website.
- ATIPPA – Guidelines for Municipalities
- Access to Information Policy and Procedures Manual
- Protection of Privacy Policy and Procedures Manual

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ATIPP Office Contact Information

- ATIPP Office
  - 729-7072; (877) 895-8891 (toll-free)
  - atippoffice@gov.nl.ca

- ATIPP office website

  www.atipp.gov.nl.ca/

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OIPC Contact Information

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