



Access to Information Act

Guide

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Access to Information Act

Overview

Purpose

A right of access is the cornerstone of an open, transparent and accountable public body. The Access to Information Act (ATIA) is a principle-based legislation that provides the right to access records held by Alberta public bodies. This right of access is balanced by providing individuals a general right to access records, subject to limited and specific exceptions, as well as the right to request access to their own personal information.

Under section 2, the purposes of the Act are to:

- allow a right of access to records held by public bodies subject to limited and specific exceptions,
- allow a right of access to an individuals own personal information about themselves, subject to limited and specific exceptions, and
- provide the for independent decision made by public bodies under this Act to the Office of the Information and Privacy Commissioner.

Scope

The ATIA applies to public bodies. Section 1 of the Act provides definitions that specify which entities qualify as public bodies for the purposes of the Act and the Designation of Public Bodies Regulation also provides a schedule of designated public bodies. This means all public bodies as defined in the ATIA in Alberta have statutory duties under the Act.

Public bodies include:

- a department, branch or office of the Government of Alberta;
- an agency, board, commission, corporation, office, or other body designated as a public body in the regulations (Designation of Public Bodies of the ATIA Regulation);
- the Executive Council Office;
- the office of a member of the Executive Council;
- the Legislative Assembly Office;
- the office of the Auditor General, the Ombudsman, the Chief Electoral Officer, the Ethics Commissioner, or the Information and Privacy Commissioner; or
- a local public body including educational bodies, health care bodies and local government bodies.

For more information on how public bodies are defined refer to section 1 of the ATIA and the ATIA Designation of Public Bodies Regulation.

The Act applies to all records in the custody or under the control of a public body (Section 3), except for those exempted under section 4. It does not:

- Replace existing procedures for accessing information;
- Does not affect access to records deposited in Archives;
- Does not limit the information otherwise available by law during legal proceedings;

- Does not affect Courts or tribunals powers;
- Does not prohibit the transfer, storage or destruction of a record in accordance and enactment of Alberta or Canada or a bylaw, resolution or other legal instrument.

A public body has *custody* of a record when it is in the physical possession of the public body.

A record is under the *control* of a public body when the public body has the authority to manage it, including restricting, regulating and administering its use, disclosure or disposition.

Some indicators that a record may be in the custody or under the control of a public body are:

- it was created by an officer, employee or member of the public body;
- it was created by an outside contracted consultant for the public body;
- it is specified in a contract as being under the control of a public body;
- it is in the possession of the public body;
- it is closely integrated with other records of the public body;
- the content relates to the public body's mandate and functions;
- the public body has the authority to regulate its use and disposition;
- the public body has relied upon it to a substantial extent; or
- a contract permits the public body to inspect, review or copy a record produced, received or acquired by a contractor as a result of a contract.

Some records are exempt from access under section 4 of the Act, meaning an individual cannot make a formal access to information request for the records. In some cases, this is because there is another process available to obtain access to these records (e.g., records of registries, court records) or the records are already available to the public (e.g., published works collected by a library or information in public archives). Other records exempted from access include teaching materials of a post-secondary body, constituency records and the personal records of elected officials. For more information on records that are exempted from access under the ATIA please see section 4 of the Act.

Relationship to other Acts

The ATIA is paramount to all legislation meaning where there is an inconsistency or conflict with a provision of another Act or regulation, the provisions of ATIA prevail unless another Act or regulation expressly states that the other Act or regulation is paramount to the ATIA (Section 5).

Regulations

There are two Access to Information Regulations that establish administrative and procedural requirements of the Act:

- Access to Information Regulation, authorized by the Lieutenant Governor in Council, integrates access to information related provisions from the FOIP Regulation and incorporates new and revised provisions to provide clarity and outline additional information to support the updated legislative requirements under the ATIA.
- The Designation of Public Bodies Regulation, under the authority of the Minister of Service Alberta and Red Tape Reduction, is a list of entities that may not definitively meet the requirements established in the ATIA definition of a "public body" and need to be explicitly designated (i.e., by name) as a public body in this Regulation.

The Act and regulations work together to provide detailed, practical guidance to help public bodies implement the new rules.

Roles and Responsibilities

Overview

Compliance with the ATIA involves various roles and responsibilities. Public bodies and program areas within those public bodies have responsibilities under the ATIA. For instance, program areas are responsible for providing records upon request to their Access to Information (ATI) Office, when an access to information request is received.

Employee

Employees are defined under the Act (section 1(g)) and include a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body. All employees have responsibilities to ensure that they work with ATI Offices to meet the legislative requirements and timelines of the Act.

Minister

The Minister of Service Alberta and Red Tape Reduction has been designated as the Minister responsible for the ATIA. This means the Minister is responsible for legislative updates and for annual reporting (see section on Annual Reporting).

Head of a public body

The head of each public body is responsible for decisions made under ATIA that relates to that public body.

Section 1(h) defines head in relation to public bodies.

The legislation allows the head of a public body to delegate some or all of their powers and duties to another employee under section 87. The only power that cannot be delegated is the power to delegate.

Delegation by head of public body

The delegation of powers by a head of a public body is done through a written delegation instrument that identifies the position, not the individual, to which the powers are delegated. When delegation is to the position rather than the person, a new delegation is not required when a new appointee assumes the position or when someone is acting in the position. A delegation instrument may also recognize another position to which delegation passes if the occupant of the original position is absent or incapacitated. A delegation instrument may cover a wide variety of duties, powers and functions under that ATIA.

A delegation instrument remains in effect until replaced. It is important to review the instrument periodically for any changes that may be needed, especially if the public body is restructured or part of the public body is transferred to another public body.

ATI Coordinator and ATI Office

The ATI Coordinator is the designated employee that handles the day-to-day operations of the ATIA. There are various aspects of the ATI Coordinator's position that may vary depending on the size of the public body, the

delegated authorities and the number and complexity of access to information requests received by the public body.

For some public bodies the structure may include a full time ATI Coordinator with additional staff that form an ATI Office, while smaller public bodies may have an ATI Coordinator that is only used on an as needed basis.

The ATI Office or Coordinator in the case of a small public body should be the focal point of access to information matters within the public body.

Access to Records

Overview

The legislation establishes administrative processes for responding to access to information requests received under the ATIA.

Under the ATIA there are no limitations on who can make access to information requests except that a public body cannot make an access to information request to another public body (section 8).

An applicant means a person who makes a request for access to a record under section 7 of the ATIA. A request made under the Act must:

- be in writing,
- be submitted to the public body the applicant believes has custody or control of the record,
- provide enough detail to enable the public body to locate and identify the record within reasonable time with reasonable effort, and
- be accompanied by a fee (where it is required under this Act).

A public body has 30 business days to respond to the request unless time is extended under section 16. A request can be made for general information, or an individual can request access to their own personal information.

Refer to Resources on ATIA for template letters.

Receiving an access to information request

When a public body receives an access to information request, the request should be reviewed to ensure it meets the criteria set out in section 7. Once a public body determines the request meets all the criteria, the time frame for processing the request starts and an acknowledgement letter should be sent to the applicant. Refer to Resources on Alberta.ca/ATIA site for template letters.

There are times a public body may determine that a request was submitted to the wrong public body, section 17 permits the transfer of that request to the correct public body, see transferring a request for more information.

Continuing request

An applicant may ask that a request continue in effect for a specified period of time up to two years (section 11). This permits the applicant to receive records concerning a particular subject or issue at regular intervals over time.

The public body may choose to accept or reject a continuing request. If it accepts a continuing request, the schedule for release of records may be determined so that it meets both the needs of the applicant and the operational constraints of the public body (for example opening up the request quarterly).

A public body may have grounds for rejecting a continuing request if:

- the situation or event that is the subject of the request is not an ongoing matter and there is no basis on which to set up a continuing request; or
- the situation that is the subject of the request is dependent on other actions involving the applicant and the applicant is receiving the information routinely on an ongoing basis.

An applicant that makes a continuing request for access to a general record, which is not a record of the applicant's own personal information, is required to pay an initial fee of \$50. This initial fee covers the work involved in registering the request, locating and retrieving records, and, in some instances, providing access to records.

A public body is also required to provide an estimate of the total fees payable over the course of a continuing request (section 13 of the Regulation). A new fee estimate does not need to be provided on each of the scheduled delivery dates. Rather, the public body must decide what portion of the estimate will apply to each installment of records in the continuing request and provide this information to the applicant.

Duty to assist

Overview

Duty to assist under the ATIA and its accompanying regulation specifies a public body's responsibilities when it comes to assisting applicants with access to records.

A public body's duty to assist applicants applies throughout the entire request process, particularly during request clarification, record searches, and responses to applicants. Under the ATI Regulation, the duty to make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely includes a duty to:

- provide the applicant with opportunities to provide clarity to enable the public body to locate and identify a requested record, narrow a request that is overly broad, or make an incomprehensible request comprehensible,
- respond to the applicant's questions in plain language, and
- provide information and offer suggestions on how the applicant may adjust a request to enable the request to be processed.

The ATI Regulation also outlines key factors to be considered when assessing whether the head of a public body has made every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely. These factors include:

- the size of the public body;
- the number of hours required to assist or respond to the applicant;
- the number of staff required to assist or respond to the applicant; and
- the impact on the regular operations of the public body.

This list is not exhaustive on the factors that can be considered in making every reasonable effort. For example, the age of records or the format in which they are stored can also be taking into consideration. Further, public bodies are required to create and maintain accurate records documenting decisions, actions, and communications with the applicant throughout the processing of each request.

Clarifying

An ATI Coordinator may need to assist an applicant in clarifying a request for access to information so that the public body can locate and retrieve the requested records. Clarification may involve assisting the applicant in defining the subject of the request, identifying specific records, and narrowing date ranges or types of records. To ensure procedural fairness, if a public body requests further information from the applicant that is necessary to process the request, the applicant must be informed that a response with the information requested is required within 30 business days. Failure to do so may result in the request being deemed abandoned under section 10.

Record search

A public body must conduct an adequate search and make a reasonable effort to identify and locate records that are responsive to the access to information request in their custody or under its control. This means contacting program areas or employees who may have responsive records.

When an access to information request is received and the public body does not believe a search can be completed within a reasonable time and with reasonable effort, the public body should work with the applicant to narrow the scope of the request prior to accepting a request under section 7 of the Act. Where a request has already been accepted a public body may extend timelines for response under section 16 where the applicant agrees or where a large number of records are requested and more time is required to process the request. A public body should also take into consideration that fees may be charged for the search of records, refer to Fact Sheet: Fees for more information.

Power to disregard requests

Section 9 of the Act sets out the only circumstances under which a public body has authority to disregard an access to information request made under section 7 of the ATIA. A public body's decision to disregard an access to information request is a serious measure that should only be exercised in exceptional cases where the criteria of the legislation is met.

A public body can decide to disregard a request where:

- responding to the request would unreasonably interfere with the operations of the public body or amount to an abuse of the right to make a request because the request has been made repeatedly or in a systematic nature,
- the request is abusive, threatening, frivolous or vexatious or is made in an abusive or threatening manner,
- the information the request relates to has already been provided to the applicant, or has been made available to the public under section 90 or 91,
- despite receiving further information from an applicant under section 7(3), the request does not meet the requirements of section 7(2)(c) because the public body does not have information that is sufficiently clear to enable the public body to locate and identify the record within a reasonable time with reasonable effort, or
- the request is otherwise overly broad or incomprehensible.

When the head of a public body makes a decision to disregard a request the applicant must be informed the reason(s) for the decision and that the applicant may submit a request for review to the Office of the Information and Privacy Commissioner. The public body must notify the applicant within 30 business days of receiving the request.

See the Fact Sheet: Disregarding Requests for more information.

Any reviews about a public body decision to disregard a request submitted to the Office of the Information and Privacy Commissioner will be handled as an expedited inquiry and timelines for public body submission will be short. For additional information on the expedited inquiries process and relevant forms, refer to the Office of the Information and Privacy Commissioner website.

Time limits for responding

The head of a public body must make every reasonable effort to respond to an access to information request within 30 business days after a request is received (Section 13). Unless one of the following instances apply:

- request was disregarded or declared abandoned,
- the time limit is extended, including for an unplanned operational closure or interruption (section 16), or
- the request has been transferred to another public body.

When the head of a public body does not respond within the 30 business day period or within the time extended under section 16, the access to information request is considered a decision to refuse access.

Extending requests for response

When a public body needs more time to respond to an access to information request, the ATIA allows the public body to extend the time limit for responding to a request under section 16.

Section 16(1) limits an extension of a response time to 30 business days where:

- the applicant agrees,
- a large number of records are requested and more time is required to process the request, or
- more time is needed to consult with a third party, another public body or another entity before deciding whether to grant access to a record.

Under section 16(1), a public body can only apply one subsection to an access to information request, not multiples. This means that a public body that has taken an extension because the applicant has agreed cannot then take another extension due to volume.

Note: Formal third party consultations required under section 35 of the Act are a separate process from section 16(1)(c) and are authorized under section 16(4).

Under section 16(2), the ATIA permits additional time extensions, beyond the first 30 business day extension for a reasonable period of time, in the following circumstances:

- the applicant agrees,
- a large number of records are requested and more time is required to process the request, or
- more time is needed to consult with a third party, another public body or another entity before deciding whether to grant access to a record.

A public body should weigh all relevant factors when determining if an additional time extension is needed and ensure they are applicable for the circumstance of the request. Public bodies are encouraged to work with applicants where possible and only extend deadline if absolutely required. For more guidance on reasonable time extension please see the fact sheet on time extension and refer to the Information and Privacy Commissioner's website.

Where a public body decides an additional time extension is needed or warranted under section 16(2) they must inform the applicant in writing and include:

- the reason for the time extension,
- the date the applicant can expect a response, and
- the applicant may request a review of the decision to take a time extension by the Information and Privacy Commissioner.

Refer to Resources on Alberta.ca/ATIA site for template letters.

Time extensions in Emergency or disaster situations

Where a public body is faced with an unforeseen emergency, disaster or event that results in an unplanned operational closure or interruption, time frames for responding to access to information requests are automatically extended (section 16(9)). This allows for public bodies to attend to critical response of the emergency situation (for example evacuation for a wildfire).

Where time is automatically extended the public body must as soon as practicable:

- Notify the Commissioner of:
 - the emergency, disaster or unforeseen event and the anticipated end to the unplanned operational closure or interruptions, and

- [when possible] when the emergency, disaster or other unforeseen event has ended or when normal operations have resumed
- Notify the applicant:
 - when normal operations have resumed,
 - when a response to the request may be expected, and
 - that they may request a review of the extension by the Commissioner.

See Fact Sheet: Time Extensions for additional information.

Any reviews about a public body decision to extend its time to respond to an access to information request will be handled by the Office of the Information and Privacy Commissioner as an expedited inquiry and timelines for public body submission will be short. For additional information on the expedited inquiries process and relevant forms, refer to the Office of the Information and Privacy Commissioner website.

Responding to a request

Contents of response

Once a request for access to information is processed, the applicant must be told how access will be given. Section 14 of the ATIA requires a public body to inform the applicant:

- whether access to the requested record or part of it is granted or refused;
- if access is to be granted to the record or part of it, where, when and how access will be given; and
- if access is to be refused, the reason for refusal and the section(s) of the Act on which this is based, the contact information to which the applicant can direct their questions regarding the refusal, as well, that the applicant may ask for a review of that decision by the Information and Privacy Commissioner.

All responses should include the contact information of the public body which can receive requests for reviews and that the request for review must be submitted to both the head of the public body or their delegate and the Information and Privacy Commissioner within 60 business days of receiving a notice. Providing this contact information ensures it is readily available for the applicant to reference if they decide to submit a request for review under section 59.

Refusal to confirm or deny existence of a record

In certain situations, a public body may believe that an applicant's knowledge that a record exists may cause harm to a law enforcement matter (section 23), may pose a danger to an individual's or the public's safety (section 21) or would be an unreasonable invasion of a third party's personal privacy (section 20). Section 14(2) of the Act permits the public body to refuse to confirm or deny the existence of a record in these instances.

If a public body refuses to confirm or deny the existence of a record containing information specified in section 14(2), the public body does not have to tell the applicant the exception(s) it relied upon to refuse to confirm or deny existence of a record.

Abandoning requests

There are occasions where a public body will need to declare an access to information request as abandoned. Sometimes it is clear that an applicant has decided not to pursue an access to information request by informing a public body their intention to not to proceed with the request.

Other times an applicant simply does not respond during the processing of an access to information request when more information is needed or where a fee is required. No indication is given that the applicant has decided not to pursue the request. They simply do not respond to communications from the public body.

Under section 10 of the ATIA, a public body may decide to declare an access to information request as abandoned if:

- the applicant does not respond to communication from the public body for more information needed to process their request, or
- a fee is required and the applicant has not responded.

If the applicant does not respond within 30 business days of being contacted, the public body can notify the applicant in writing, that the request has been declared abandoned. The notice to the applicant must state that the applicant may submit a request for review to both the head of the public body or their delegate and the Information and Privacy Commissioner.

All notices under the Act should include the contact information of the public body which can receive requests for reviews and that the request for review must be submitted to both the head of the public body or their delegate and the Information and Privacy Commissioner within 60 business days of receiving a notice. Providing this contact information ensures it is readily available for the applicant if they decide to proceed with a request for review under section 59.

Any reviews about a public body decision to abandon a request will be handled by the Office of the Information and Privacy Commissioner as an expedited inquiry and timelines for public body submission will be short. For additional information on the expedited inquiries process and relevant forms, refer to the Office of the Information and Privacy Commissioner website.

Transferring requests

When a public body receives a request for access to information that is determined to be more appropriately handled by another public body, the request should be transferred under section 17. Examples would include when it is determined by one public body that another public body produced, first obtained, or controls the record the access to information request pertains to.

A public body has discretion in deciding whether to transfer a request to another public body.

If a public body makes the decision to transfer the request, the public body has 15 business days, after a request is received, to transfer the request to the other public body.

The receiving public body must open and process the request in accordance with the ATIA.

Records available without a request

In addition to providing access to records and information through formal access to information requests, public bodies can release records and information through other processes (section 90). The ATIA is not meant to limit a public bodies ability to release reports, publications or other records without a formal access to information request.

This means if a public body has records that are requested routinely, the head of the public body may determine what records can be publicly available either through a responsible program area or through a website. For example, in the Government of Alberta, records are proactively disclosed through the [Government of Alberta Open Government Program](#). Through the Program, government departments release departmental or program-specific information, reports and other information,

The decision to make records available without a request is up to the head of each public body. When a public body wishes to disclose records outside the formal ATIA process, the public body has the right to sever information that would otherwise be removed in a formal access to information request and may charge a fee to provide the record.

Refer to Fact Sheet: Records Available without Request for more information.

Exceptions to the Right of Access

Overview

Generally, an applicant has a right of access to all or part of a record that is the subject of their access to information request. A record cannot be withheld simply because it may contain sensitive, embarrassing information, or incorrect information.

Each record must be carefully reviewed with someone who has knowledge and expertise about the program or topic to ensure exceptions are applied correctly. Only specific information that falls under an exception should be removed/withheld while the rest of the record is provided. This is typically referred to as severing a record and is mainly done through specialized software.

Where possible a public body should release as much information contained in a record as possible. When reviewing a decision to disclose information a public body must take into consideration all relevant factors when considering whether an exception to an applicant's right of access applies to the record and more than one exception may apply to all or part of the record or information.

There are two types of exceptions under the Act, mandatory and discretionary.

Mandatory

Mandatory exceptions begin with the phrase "the head of a public body must refuse to disclose". If information falls within a mandatory exception, a public body must refuse to disclose all or part of the record as required. Public bodies should review all of the criteria and weigh all factors relating to an exception before deciding whether an exception to disclosure applies.

There are three mandatory exceptions:

- Disclosure harmful to business interests of a third party (section 19)
- Disclosure harmful to personal privacy (section 20)
- Cabinet and Treasury Board confidences (section 27)

There are three mandatory subsections:

- Disclosure harmful to law enforcement (section 23(4))
- Chief Internal Auditor (section 29(3))
- Privileged information of a third party (section 32(2))

There are also instances where information must not be disclosed if the disclosure of another enactment of Alberta requires the information be protected. Where there are questions or uncertainty consult with your public body legal counsel, program area, or the head of your public body.

Discretionary

Discretionary exceptions begin with the phrase "the head of a public body may refuse to disclose". If information falls within a discretionary exception, the public body must use discretion on what information can be withheld. Just like mandatory exceptions a public body should review all relevant factors relating to an exception before deciding whether an exception to disclosure applies.

There are 13 discretionary exceptions:

- Disclosure harmful to individual or public safety (section 21)
- Confidential evaluations (section 22)
- Disclosure harmful to law enforcement (section 23)
- Workplace investigations (Section 24)
- Disclosure and complaints (Section 25)
- Disclosure harmful to intergovernmental relations (Section 26)
- Local public body confidences (section 28)
- Advice from officials (section 29)
- Disclosure harmful to economic and other interests of a public body (section 30)
- Testing procedures, tests and audits (section 31)
- Privileged information (section 32)
- Disclosure harmful to conservation of heritage sites, etc. (section 33)
- Information that is or will be available to the public (section 34)

Exercise of discretion

When applying exceptions to access, a public body must consider all relevant factors and use their discretion on if information should be released or not. This is a fundamental part of applying the Act. A public body should be able to show why information was withheld and what factors contributed to their decision.

If there is a request for review the Information and Privacy Commissioner will review the public bodies decision to withhold information and will require the public body to explain what factors contributed to the decision. To fully understand the context, public bodies should consult with the program area or an individual with knowledge of the record to ensure exceptions are applied correctly.

Harms test

Some exceptions both mandatory and discretionary are based on a harms test. Generally, this means there is a reasonable expectation of harm resulting from the disclosure of specific information in a record.

The Information and Privacy Commissioner has established a three-part harms test for applying section 23 (formally section 20 of FOIP) disclosure harmful to law enforcement. This test can be applied to other provisions under the Act that refer to harm. The following is the three-part test:

- There must be a reasonable expectation of probable harm,
- The harm must constitute damage or detriment, and not mere inconvenience, and
- There must be casual connection between disclosure and the anticipated harm.

See Information and Privacy Commissioner Orders available on their website for further information.

Third Party Notice

Third party process

Third party is defined under section 1(v) as a person, a group of persons or an organization other than an applicant or public body.

Where a public body is looking to disclose a record that contains third party information and, if disclosed there could be harm of unreasonable invasion of an individual's privacy (section 20) or if disclosure could harm the business interests of third party (section 19), the public body must provide the impacted individual/business the opportunity to provide representations on the disclosure.

Where a public body is not looking to release the third-party information there is no need to enter into the third party notice process under section 35 and 36 of the Act. A public body may decide to give notice when it is not required to do so to allow a third party to provide reasons to not disclose the information or to consent to the release of the information.

There are two instances where notifications are not required for more information refer to sections 35(2) and (3) of the Act.

Notifying third parties

When the public body is considering granting access to a record that contains information as described in sections 19 and 20 of the Act, the head of the public body (or delegate) must give written notice to the third party as soon as practicable. This notice under section 35(5) must:

- State that a request for access has been made and the disclosure may impact the business interests or invade the personal privacy of the third party,
- Include a copy of the record or part of the record that the public body is considering disclosing, and
- State that the third party must respond in writing to either consent to the disclosure or make representations why the information should not be disclosed.

Information on the consent requirements for third party's can be found in regulation section 10 including the consent be in writing and identifying the information the third party is consenting to disclose.

The applicant, under section 36, must also be provided notice that:

- Information contained in their request for access to records may contain information that could impact the business interests or invade the personal privacy of the third party,
- That the third party is being provided the opportunity to make representations on disclosure of the information, and
- That a decision will be made within 30 business days after the notice is given.

Refer to Resources on Alberta.ca/ATIA site for template letters.

Notices should be in writing and sent to the last known address of the third party by prepaid mail, personal service, or another service if authorized by the Information and Privacy Commissioner, by fax or by another electronic means if the third party's contact information is publicly available or has been provided by the third party. For more information refer to manner of notice (section 85) of the Act.

Time limit and notice of decision

Where a public body is processing a request involving third party records and notices, the ATIA requires the public body to delay responding to a request subject to the notice to allow for the third party to exercise their rights under the Act.

Once a public body starts the third party notice process it must adhere to the time limits set out in section 36 of the Act.

The applicable time limits are as follows:

- A third party has 20 business days to respond to the notice, there are no available time extensions to extend timelines for a third party to provide notice,
- No decision on access can be made until the third party's response is received, or 21 days after the notice is given, whichever comes first.
- The public body must make a decision whether to grant access or not and notify the third party and applicant of this decision within 30 business days after the third party notice is given,
- After the public body's notice of decision is given, a third party has 20 business days to ask for a review unless they have consented to the disclosure of the records,
- After the public body's notice of a decision is given, the applicant has 60 business days to ask for a review.
- Requests for review must be submitted to both the head of a public body and the Information and Privacy Commissioner.

The Act does allow a public body to extended timelines during an emergency, disaster or other unforeseen event that results in an unplanned operational closure or interruption. Where the time limit for making a decision is extended the head of the public body (or delegate) must notify:

- Notify the Commissioner of:
 - the emergency, disaster or unforeseen event and the anticipated end to the unplanned operational closure or interruptions, and
 - [when possible] when the emergency, disaster or other unforeseen event has ended or when normal operations have resumed
- Notify the applicant and third party:
 - when normal operations have resumed,
 - when a decision may be expected, and that the applicant or third party may request a review of the extension by the Commissioner.

A time extension for an emergency or disaster situation should be only used when a public body is facing an unplanned interruption (for example a wildfire or flood).

Third Party Consents

Where a third party consents to the disclosure of their information the consent must meet the criteria in section 7 of the ATI regulation. The consent must be in writing, identify the information for disclosure and be signed.

If the third party consents to the disclosure of their information there is no 20 business day review period, and records should be released to the applicant as soon as practicable after the notice of decision.

Reviews and Inquiries

Overview

All decisions, acts or failures to act, made by the head of a public body, under the ATIA, can be reviewed by the Information and Privacy Commissioner.

Where an applicant requests a review of a decision made by the head of a public body, the Information and Privacy Commissioner is required to complete their review or inquiry within 180 business days unless extended as allowed under the Act.

For more information on the review process see the Office of the Information and Privacy Commissioner website.

Note: Prior to submitting a request for review the applicant is required to attempt to resolve the matter directly with the public body. This requires the public body to ensure they have met their duty to assist and may result in questions from the applicant on the search, application of exceptions or other process related questions. The public body is encouraged to proactively communicate and work with the applicant to resolve the matters.

Requesting a review

Requests for review must be submitted to both the Information and Privacy Commissioner and the head of the public body or their delegate. All notices under the Act should include the contact information of the public body that can receive requests for reviews and that a request for review must be submitted to both the head of the public body or their delegate and the Information and Privacy Commissioner. Providing this information ensures it is readily available for the applicant to reference if they decide to request for a review.

Review Process

The ATIA has several provisions related to the review process. For process related to timelines submissions and procedures on the review and inquiry process refer to the Office of Information and Privacy Commissioner website.

Records and Information Management

Purpose

While the Act does not specifically address records management practices, responding to access to information requests without proper records management practices can be challenging. Proper records management practices aid with finding responsive records, and limits the extent of duplicate records to be processed and effective disposition ensures transitory records are managed appropriately effectively.

The primary purposes for records and information management are to:

- Support policy formation and decision-making;
- Improve client service and support better performance of business activities,
- Support consistency, continuity and productivity in operations, administration and management.
- Protect the interests of the organization and the rights of clients, the public and employees.
- Provide protection and support in litigation, including better management of risk associated with the existence or lack of evidence of activities or events,
- Facilitate research and development activities, and
- Enable organizations to meet legislative and regulatory requirements.

Public bodies should have in place effective records and information management practices.

All records are included

Management practices should apply to all records, personal information and electronic records, as defined in the ATIA.

Record is defined in section 1(u) of the Act as any electronic record or other record in any form in which information is contained or stored, including information in any written, graphic, electronic, digital, photographic, audio or other medium, but does not include any software or other mechanism used to store or produce the record.

Electronic record is defined in section 1(f) of the Act as a record that exists at the time a request for access is made or that is routinely generated by a public body that can be any combination of texts, graphics, data, audio, pictorial or other information represented in a digital form that is created, maintained, archived, retrieved or distributed by a computer system.

Records include information in all media and in all locations. For example, records may be stored on networks, local hard drives, portable hard drives, and personal digital assistants, as well as in portable storage devices, such as CDs, USB drives, DVDs, and tapes.

Effective management of recorded information

The following principles should guide the effective management of recorded information:

Information is an important asset of the public body

- An essential principle for the management of recorded information is that information is managed as a resource or asset of the whole public body and not as the property of individuals, program area, branches or divisions.

A life-cycle management approach is adopted

Key principles for the management of recorded information are based on the life cycle of information, Management activities within the life cycle include:

- the planning of information systems, including appropriate controls over the collection, creation or compilation of recorded information;
- the establishment of practices and procedures governing the organization, distribution, retrieval, use, accessibility, and transmission of the recorded information and for its storage, maintenance and protection;
- provisions for routine disclosure and dissemination of such information, as appropriate; and
- the regulation of the scheduling and disposition of all recorded information.

Accountability is assigned

In the case of provincial government departments and Designation of Public Bodies Regulation, the Records Management Regulation assigns accountability for records management in the public body to the deputy head.

Given the close relationship between the ATIA and the effective management of records, there should be a similar assignment of accountability for the management of records for all Alberta public bodies.

It is recommended for advice on records management you contact the responsible area in your public body, or your public body legal counsel.

Policies and guidelines should be developed with the administration of the ATIA in mind and should include appropriate references to access to information and protection of privacy requirements under the *Protection of Privacy Act* in policy statements, procedures, practices and standards.

The following components should be included in policies and guidelines for the management of records:

- life-cycle management of records;
- establishment and maintenance of a records system;
- guidelines for the creation and generation of records;
- a guide for transitory records;
- records management in contracting;
- scheduling and disposition of records;
- guidelines and practices relating to the retention and disposition of e-mail and other forms of electronic messages;
- rules for the organization, storage and protection of records;
- rules for the organization and management of electronic records;
- records system requirements for planning and designing electronic applications that will collect, create or generate information used by the public body; and
- security.

Role of the Information and Privacy Commissioner

Overview

The Information and Privacy Commissioner is an Officer of the Legislature and is independent of government. The Commissioner is appointed by the Lieutenant Governor in Council, on the recommendation of the Legislative Assembly for a term not exceeding 5 years, however is eligible for reappointment.

The Information and Privacy Commissioner is responsible for the oversight and enforcement of the ATIA. Their role is to provide for independent reviews of decisions made by public bodies under the Act and the resolution of complaints.

General Powers

The Information and Privacy Commissioner may:

- Conduct investigations to ensure compliance with any provision of the Act or compliance with rules relating to the destruction of records.
- Make an order regarding duties imposed by the Act, time extensions or fees whether or not a request for review is requested.
- Inform the public about the Act.
- Receive complaints from the public concerning the administration of the Act.
- Engage or commission research with anything related to this Act.
- Comment on the implications of access to information and proposed legislative schemes or programs.
- Bring attention to the head of a public body any failure by the public body to assist applicants.
- Give advice and recommendations on the general application of the Act.

Power to compel

The Information and Privacy Commissioner has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act* and the powers under section 50(1) of the ATIA when conducting an investigation or an inquiry, or in giving advice and recommendations under of the ATIA. These include the power to compel witnesses to attend and answer questions at an inquiry, to compel records to be produced, to hold a person in contempt, and to obtain assistance from law enforcement officers.

Power to compel production of records

The Commissioner may require any record to be produced and may examine any information in a record, including personal information, whether or not the record is subject to the provisions of the Act unless it is:

- A record exempted under 4(1)(a), (s), (t) or (w),
- A record or information subject to privilege, or
- A record or information subject to Cabinet or Treasury Board Confidences.

A public body must produce any record or copy of a record requested by the Commissioner within 10 business days under (section 50(3)). The Commissioner has established a protocol as to how their Office will deal with records for which a public body has claimed solicitor–client privilege (see *Solicitor–Client Adjudication Protocol*, published on the Office of the Information and Privacy Commissioner website).

The requirement to produce records applies to records that the public body believes to be exempted from the application of the Act under.

If a public body is required to produce a record and it is not practicable to make a copy of it, the head of a public body may request that the Commissioner examine the original at the site of the public body.

After completing a review or investigation the Commissioner must return all original paper records or destroy any copy a record (whether paper or electronic) provided to the Commissioner (section 50(5)).

Protection from liability

The Commissioner and the staff of the Commissioner's Office are not liable for anything they do, report or say in good faith in the exercise of their duties under Part 2 of the Act (Office and Powers of the Information and Privacy Commissioner), or Part 3 of the Act (Review and Complaints).

As long as the Commissioner and the Commissioner's staff act honestly and with the intention of complying with the Act, no action can be brought against them.

Delegation of the Information and Privacy Commissioner's powers

The Commissioner may delegate, in writing, to another person any duty, power or function of the Commissioner under the Act. The only exception to this provision is that the Commissioner cannot delegate the power to delegate.

This allows the Commissioner to delegate, for example, the power:

- to examine law enforcement information and other records, and
- to hold inquiries and issue Orders on completion of those inquiries.

Information and Privacy Commissioner's Orders

Upon completion of an inquiry, section 62 of the Act requires the Commissioner to make an Order.

If the inquiry concerns a refusal to grant access to all or part of a record, the Commissioner must order one of the following:

- require the public body to give access to all or part of the record,
- confirm the decision of the public body or require the head to reconsider a decision to refuse disclosure,
- require the head to refuse access to part or all of the record requested, or
- order that no further action is required.

If the inquiry relates to any other matter, the Commissioner may order a public body to:

- require that a duty imposed by the Act or regulations be performed
- confirm or reduce the extension of a time limit under section 16, or
- confirm or reduce a fee or order a fee refund,

When the Commissioner finds that a refusal to grant access is authorized under the Act, and the head of the public body has properly exercised his or her discretion, the Commissioner can only confirm the decision of the public body or request that the head reconsider the decision.

Duty to comply with orders

Upon receipt of an Order made under the Act a head of a public body must comply with the order or request a judicial review of decision by the Courts within 45 business days from the date of the original order.

Where a public body does not request judicial review the public body has 50 business days to comply with the order of the Information and Privacy Commissioner.

Offences and Penalties

Overview

A public body, or anyone acting on its behalf, must not take negative employment action against an employee for properly disclosing information under this Act. Anyone who violates this rule commits an offence and may be fined up to \$10,000.

Anyone who knowingly does the following can be subject to a fine up to \$50,000:

- Makes false statements to, mislead or attempt to mislead the Commissioner or someone working on their behalf;
- Obstructs the Commissioner or someone working on their behalf from performing their powers duties or functions,
- Alters, falsify or conceal any record, or direct another person to do so, with the intent to evade a request for access to a record,
- Fails to comply with an order made by the Commissioner or independent adjudicator, or
- Destroys any records subject to this Act, or direct another to do so with the intent to evade a request for access to a record.

Annual Report

Purpose

Service Alberta and Red Tape Reduction compiles the Access to Information Act Annual Report to fulfill the requirement of section 88 of the Act. Section 88 requires the Minister responsible for the ATIA to prepare an annual report about the operation of the Act and lay the report before the Legislative Assembly.

Each annual report covers the fiscal year for the period of April 1 through March 31, and outlines some of the year's highlights and accomplishments. The report includes statistical information on number of requests received, who made access requests (e.g., public, media, organization, elected official, etc.), how requests were processed (e.g., partly disclosed, totally disclosed, transferred, etc.).

Collection of Statistics

On an annual basis, public bodies will be requested to submit their statistics on access to information requests received and completed for the fiscal year. This collection process commences with an initial email sent to ATI Coordinators (as per the ATI Coordinator Directory) that provides a link to an online form for completion. The annual Statistics form for the fiscal year requested is to inform Service Alberta and Red Tape Reduction's report, the following information is requested from each public body:

- Number of access to information request(s) received and completed in period;
- Number of continuing access to information request(s);
- Source of access to information request(s) (i.e., applicant type);
- Disposition of access to information request(s) (e.g., partially disclosed, transferred, completely disclosed, etc.) completed in reporting period; and,
- Completion time for reported access to information request(s).

Development of Annual Report

The statistics collected from Alberta public bodies are compiled and used to develop the annual report. Once the report is complete, the Minister of Service Alberta and Red Tape Reduction tables the report in the Legislative Assembly in accordance with the ATIA.