

# Fact Sheet: Delegation under the *Protection of Privacy Act*

This fact sheet provides information on the ability for the head of a public body to delegate responsibilities under the *Protection of Privacy Act* (POPA).

## Delegation by the head of a public body

Delegation refers to the formal process where the head of a public body authorizes an officer or employee to exercise certain powers, duties or functions of the head under the Act. Only the head of a public body has the power to delegate some or all of the head's powers to one or more officers or employees of the public body.

Section 55 of the POPA states:

*(1) The head of a public body may delegate to any person any power, duty or function of the head under this Act, except the power to delegate under this section.*

*(2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the head of the public body considers appropriate.*

A delegation instrument is a formal written document whereby someone, other than the head, is authorized to carry out a power, duty, or function delegated by the head under the Act. This delegation instrument should be executed by the head and may contain any conditions or restrictions that the head considers appropriate.

The Protection of Privacy (Ministerial) Regulation, section 6(1)(a), requires the public body to designate or identify a privacy officer within the public body who will be responsible for ensuring the public body's compliance with POPA. In smaller public bodies, the head may also serve as the privacy officer. In contrast, larger public bodies often require a more detailed delegation instrument to effectively manage privacy matters, distributing responsibilities across various positions within the organization.

## Delegation Considerations

Public bodies should develop delegation instrument(s) in alignment with their organizational structures and operational needs. Some common considerations and best practices include:

- Through a delegation instrument, the head may delegate some or all of the head's powers, duties, or functions as authorized by the POPA. Specifically, delegation may be considered for all POPA provisions that state that the head may or must do something.
  - The person delegating the authority remains responsible and accountable for all actions and decisions made under that delegation.
- The delegation of powers, duties or functions should be assigned to a position or title, not the individual, to which the powers are delegated. This ensures any delegation remains effective when there is change in personnel.
- It is important to review the delegation periodically for any changes that may be needed, especially if the public body is restructured or a new head is elected/appointed or hired.
- When developing and reviewing a public body delegation instrument, it is encouraged your legal counsel is consulted.

Refer to the **Delegation Table Template** for lists of some of the POPA provisions for which delegation could be considered.