

Access to Information and Protection of Privacy

May 2024 Presentation to MNL
What Councils Need to Know





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 training designed to provide an overview for municipal councilors with respect to frequently asked questions about ATIPPA, 2015.

Background – ATIPPA, 2015

The Access to Information and Protection Act, 2015

- Applies to all public bodies
- 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)

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



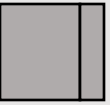
Privacy Assessments

Assess privacy impacts
Develop templates/guidance



Statistical Reporting

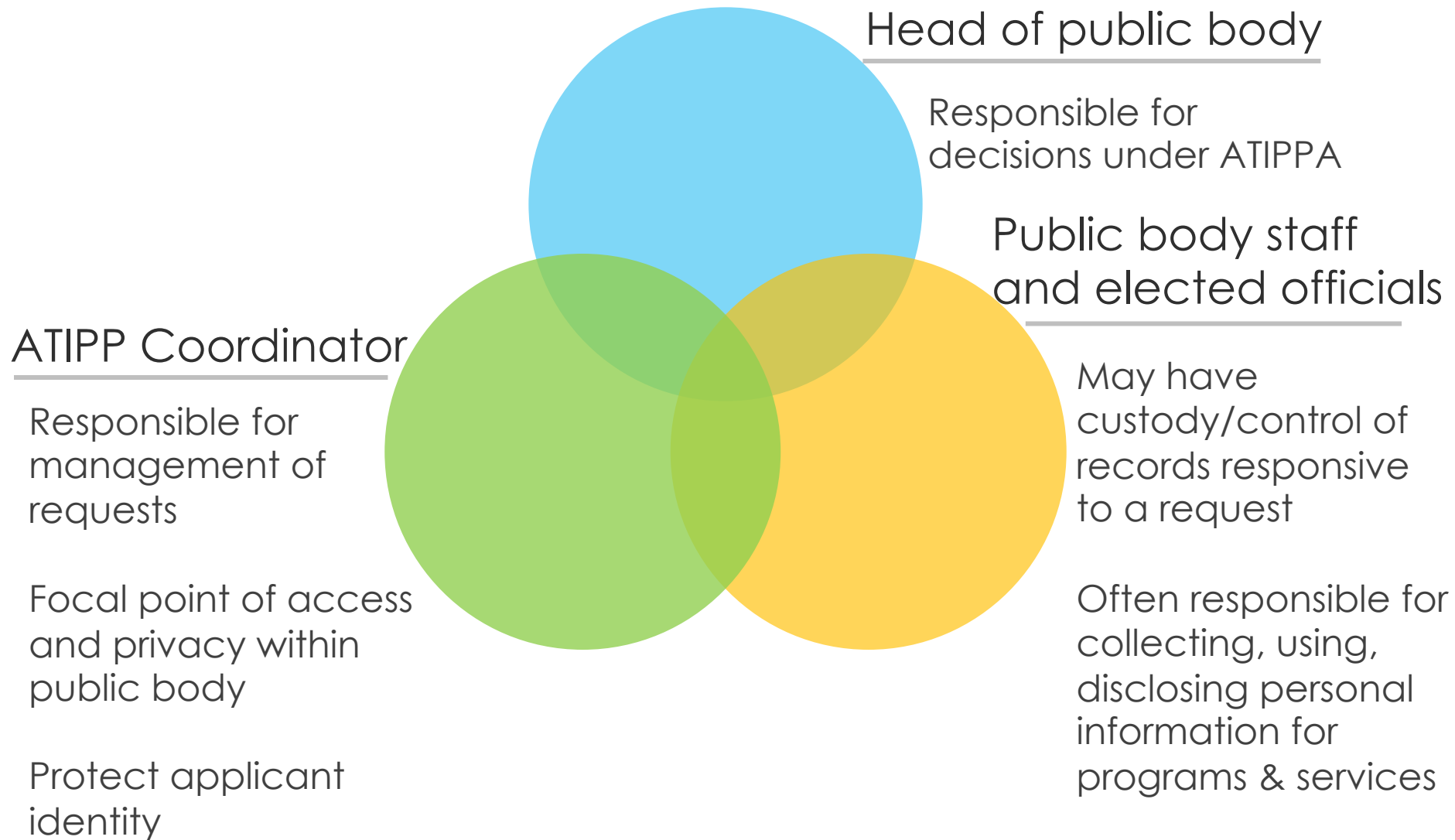
Collect, maintain, compile and
release statistics on requests



Office of the Information and Privacy Commissioner (OIPC)

- Independent Statutory Office
- Receives privacy breach reports from public bodies
- Investigates access to information and protection of privacy issues
- Audits public bodies for access and privacy compliance

Role of Individuals





Head of Public Body

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



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
 - an offence to obstruct or mislead a person performing duties or exercising powers under the Act
- Protect identity of applicants throughout request process
- Duty to Assist

FAQ

QUESTION ON TABLING DOCUMENTS

- Should town administrators redact or edit documents that contain personal information before tabling them at a public council meeting?

ANSWER

- When a person submits a letter, email or other document to council about an issue, they should be advised that their correspondence may be tabled at a public council meeting.
- Any documents tabled at a public council meeting will become public documents.
- When a piece of correspondence has been selected for tabling, you should consider whether releasing the information would be an unreasonable invasion of privacy.

ANSWER CONTINUED

- As a general rule, it is appropriate to redact the name and address of a person sending a letter prior to tabling the document. That way, their personal information is protected but the content of the letter can still be discussed.
- However, there may be situations where releasing the name would not be an unreasonable invasion of privacy; for example, where releasing personal information is necessary for appropriate public scrutiny of the town.
- If a letter addresses a sensitive issue, it may be appropriate to provide council with a summary of the information rather than the letter itself, or to ask council to discuss the matter at a privileged meeting.

QUESTION ON WHAT CAN BE REQUESTED

- **CAN A PERSON ACTUALLY ASK FOR ANYTHING IN AN ATIPP REQUEST?**

ANSWER

- We have a saying that everything is ATIPP'able.
- There is really no limit on what an applicant can seek.
- ATIPPA is about records and if information is in the custody and control of a public body in a recorded format then yes a person can actually ask for anything.
- However, just because everything is ATIPP'able, it does not mean that everything is releasable.
- ATIPP contains 15 specific exceptions to access. 5 of these are mandatory exceptions and 10 are discretionary exceptions.

Records

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

What is a record?



Emails



Photographs



Voicemails,
texts, BBMs



Post-it notes



Paper documents



Journal books



Calendar entries



Videos



Maps



Electronic records



Draft documents

QUESTION ON NUMBER OF REQUESTS

- **IS THERE A LIMIT TO HOW MANY REQUESTS A PERSON CAN MAKE?**

ANSWER

- The Access to Information and Protection of Privacy Act does not provide any limitations on how many requests an individual can make.
- Currently there is no limit for “banking” requests and processing them later.
- If an applicant makes a series of requests it *may* be possible to apply for a disregard.
- However, a disregard is very hard to obtain therefore public bodies should consider time extensions when multiple concurrent requests are received (whether from the same applicant or different applicants)

QUESTION ON COSTS

- **CAN A MUNICIPALITY CHARGE AN APPLICANT FOR MAKING A REQUEST OR RECOUP THE COSTS ASSOCIATED WITH PROCESSING THE REQUEST?**

ANSWER

- You are not permitted to charge a fee to submit a request
- There are absolutely no costs charged for personal information requests
- Public Bodies can charge costs for locating records but only after you subtract the first 10 hours you spent locating records
- You can recoup costs if you must pay a significant fee for shipping the records to the applicant.
- You can recoup costs if you must pay significant fees to reproduce a record (e.g. Large maps)

QUESTIONS ON DISGREARDS

- **IS IT REALLY IMPOSSIBLE TO GET AN ACCESS TO INFORMATION REQUEST DISREGARDED?**

ANSWER

- No, it is not impossible to get an access to information request disregarded.
- It is, however, a very high bar to meet to actually get approval from the OIPC to disregard a request.
- A disregard can only be granted by the OIPC. A public body cannot decide on their own to not process a request.
- An application to disregard a request must be made within 5 business days of receiving a request.
- The specific criteria for disregards can be found on the OIPC website in their guidance document:
[Applying to the Commissioner for Approval to Disregard Access Requests.pdf \(oipc.nl.ca\)](https://www.oipc.ca/guidance/apply-to-the-commissioner-for-approval-to-disregard-access-requests.pdf)

QUESTION ON TIME EXTENSIONS

- **WHAT ARE THE RULES AROUND TIME EXTENSIONS, HOW DO WE GET THEM, WHAT ARE SOME TIPS AND TRICKS TO HELP?**

ANSWER

- Time extensions can only be granted by the OIPC
- Time extensions must be applied for within 15 business days of receiving an access to information request.
- The bar to receiving a time extension is certainly not as high as the one for disregards, however the OIPC does not just give out extensions because you ask.
- To obtain a time extension from the OIPC you must complete a form provided by the OIPC. They also have a guidance document on their website: [RequestingaTimeExtension.pdf \(oipc.nl.ca\)](#)

QUESTION ON PROVIDING RECORDS TO COUNCILORS

- IF A COUNCILOR ASKS TO SEE A TOWN DOCUMENT AND THAT DOCUMENT CONTAINS PERSONAL INFORMATION OF A RESIDENT OR A STAFF MEMBER SHOULD IT BE PROVIDED TO THE COUNCILOR?

ANSWER

- Councilors have access to all information contained in public documents.
- For other information, personal information should only be disclosed to councilors where it is necessary to carry out a purpose the municipality is trying to achieve. This includes when personal information is needed to assess a conflict of interest and when personal information is needed to inform a decision
- For example, there are circumstances where sensitive personal information should be withheld from the public such as when there is an accusation of harassment from one employee by another; it would be inappropriate to discuss the matter openly in a public meeting. However, if the council needs to assess the situation and decide how to proceed, they will need to have the information necessary to make that decision. This may mean that they will need access to some personal information.

ANSWER CONTINUED

- There are times when a municipality deals with sensitive personal information and councilors do not require that personal information to do their jobs.
- For example, if a councilor wants general information on the number of people who owe money to the town and the amounts, the town clerk could provide the councilor with a list that does not include names.
- There are times when councilors will be privy to personal information that is not available to the general public. Councilors should not disclose that personal information unless they are allowed to do so under the ATIPP Act, 2015. If information is collected, used, accessed or disclosed inappropriately, an individual may make a complaint to the Office of the Information and Privacy Commissioner (OIPC).

QUESTION ON PRIVACY BREACHES

- **WHAT IS A PRIVACY BREACH AND WHAT DO I DO IF ONE OCCURS?**

ANSWER

- A privacy breach occurs any time information is accessed, collected, used or disclosed in contravention of the ATIPP Act, 2015.
- Some examples of privacy breaches that could occur in the municipal context include:

A person hacks into a municipality's computer system and obtains personal information including employees resumes;

A town employee sends a fax containing personal information to the wrong number;

A town employee mails a letter containing personal information to the wrong address; or

A town councilor attends a privileged meeting about an employee dispute. The councilor takes documents about the matter home and leaves the documents on the kitchen table. The councilor's spouse sees the documents and reads all about the dispute.

ANSWER CONTINUED

- There are 4 steps to responding to a privacy breach:
 - 1. Contain the breach
 - 2. Assess the risk created by the breach
 - 3. Notification
 - 4. Prevention
- All privacy breaches must be reported to the OIPC. All privacy breaches should also be reported to the ATIPP Office.
- In addition, where a person's privacy is breached and there is a risk of significant harm, that person must be notified of the breach.

Question on use of personal devices and emails

- We get asked often about whether it is ok for councilors to use their own personal cell phones, tablets, etc to conduct town business. We also get asked if it is ok for councilors to use their personal email addresses for town business.

ANSWER

- The simple answer is it is not recommended that you use either your personal email or your personal device to conduct town business.
- However, in some cases it is unavoidable.
- IF you conduct town business using your own device or your own email these become records of the public body and can be ATIPP'ed.
- You must be prepared to either turn over your device to your coordinator or conduct a “reasonable” search of your electronics to obtain records if an ATIPP request is received.
- Failure to do this is an offence under the ATIPP legislation.
- **SUGGESTION: If records are on a personal device/account, delete what can be deleted (transitory and according to retention schedule), transfer others to appropriate device/account.**



Resources

- ATIPP Office

729-7072; (877) 895-8891 (toll-free)

atippoffice@gov.nl.ca

- ATIPP website

www.atipp.gov.nl.ca/

THANK-YOU

- *Questions?*