



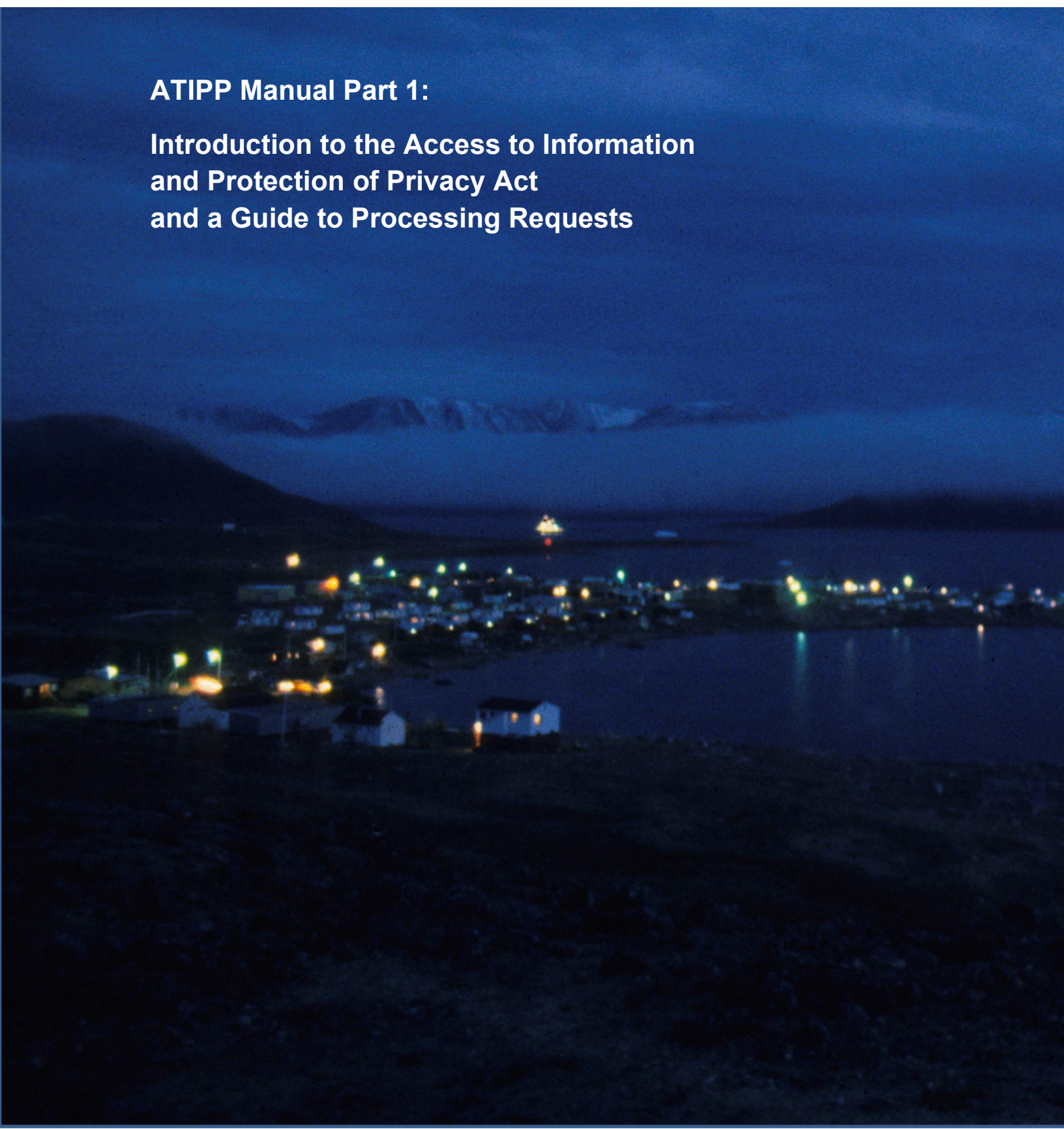
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Building *Nunavut* Together  
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Bâtir le *Nunavut* ensemble

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Department of Executive and Intergovernmental Affairs  
Kavamaliqiyikkut  
Ministère de l'Exécutif et des Affaires Intergouvernementales

## ATIPP Manual Part 1:

# Introduction to the Access to Information and Protection of Privacy Act and a Guide to Processing Requests



## Table of Contents

1—Introduction.....	4
1.1 About the ATIPP Manuals.....	5
1.2 Definitions.....	5
1.3 Purpose of the Act .....	7
1.4 What the ATIPP Act Applies To .....	7
1.5 Penalties under the ATIPP Act.....	7
1.6 Non-ATIPP (Informal) Requests.....	8
2—Roles and Responsibilities.....	9
2.1 Public Bodies and ATIPP .....	10
2.2 Delegation of Authority.....	10
2.3 Duties of the ATIPP Coordinator .....	10
2.4 ATIPP Office .....	11
2.5 Legal Counsel.....	12
2.6 Right of Access.....	12
2.7 Custody and Control of Records .....	12
2.8 Language of Request and Response .....	13
3—Processing an ATIPP Request: Administration and Preparation.....	15
3.1 Introduction.....	16
3.2 Making a Request and Receiving a Request.....	16
3.3 Anonymity.....	17
3.4 Tracking Numbers and Due Dates .....	18
3.5 Assisting the Applicant and Determining the Scope of Request.....	18
3.6 Letter of Acknowledgement.....	20
3.7 Application Fee and Fee Estimate .....	20
3.8 Transferring a Request .....	21
4—Processing an ATIPP Request: Searching and Retrieving Records.....	23
4.1 Introduction.....	24
4.2 Office of Primary Interest and Search Declarations.....	24
4.3 Sensitive Requests .....	24
4.4 Request for Electronic Data .....	26
4.5 Manual Searches of Outlook Files .....	26
.....	29

5—Processing an ATIPP Request: Preparing Documents for Release .....	29
5.1 Introduction.....	30
5.2 Compiling and Organizing Documents.....	30
5.3 Assessing Records .....	31
5.4 Extensions .....	31
5.5 Third Party Notifications.....	33
5.6 Reviewing for Redactions .....	33
5.7 Redacting Documents.....	34
6—Release Process .....	36
6.1 Introduction.....	37
6.2 Letter of Release .....	37
6.3 Releasing Records, Communications, and Further Discussions .....	38



## 1—Introduction

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## 1.1 About the ATIPP Manuals

This manual is Part 1 of a four-part comprehensive guide on the *Access to Information and Protection of Privacy (ATIPP) Act* and Regulations for processing Access for Information requests. These manuals are meant to provide clarity, direction and practical examples to help you understand the *ATIPP Act*, however they are not meant to replace the *ATIPP Act* as a reference for ATIPP requests. All ATIPP Coordinators are expected to be familiar with the *ATIPP Act* and its provisions.

Part 1 covers the foundations of the *ATIPP Act*, the people and organizations involved in the ATIPP process, and the request process in general. Part 2 covers exemptions listed under the *Act* and how to apply them, while Part 3 covers the Information and Privacy Commissioner and how they are involved in the ATIPP process, and Part 4 covers the assessment of fees for ATIPP requests.

These manuals do not cover issues related to protecting privacy outside of ATIPP requests, such as privacy breaches or how to do Privacy Impact Assessments. For these and other privacy issues, please see the Privacy Management Manual. These manuals also don't deal with information that is outside of the scope of the *ATIPP Act*, such as court records or legislative assembly records.

If you are looking for a short, step-by-step guide to processing an ATIPP request, please see the *ATIPP Processing Guidelines*. For other ATIPP-related documents, please see the ATIPP Intranet page or the *Access to Information and Protection of Privacy* folder on the V-drive.

## 1.2 Definitions

There are many terms and acronyms surrounding the ATIPP Act and ATIPP requests. These are some of the most frequently used ones:

- *Applicant*: The person or organization that is making an ATIPP request.
- *ATIPP Act* (or the 'Act'): Nunavut's *Access to Information and Protection of Privacy Act*. The law that states that people have access to information held by the Government of Nunavut and other public bodies, and lays out how privacy must be protected. This is sometimes referred to as "ATIPPA".
- *ATIPP Coordinator*: An employee of a public body who is responsible for handling ATIPP requests for their public body. They are also often responsible for privacy related issues such as privacy breaches or privacy impact assessments. The ATIPP Coordinator role may be a dedicated role or something done on the corner of an employee's desk.
- *Territorial ATIPP Office*: the central office for administration of the ATIPP Act, based out of the Department of Executive and Intergovernmental Affairs.
- *ATIPP Regulations* (or the 'Regulations'): Nunavut's *Access to Information and Protection of Privacy Regulations*. Last updated in 2015, this legal document clarifies many of the things mentioned in the *ATIPP Act* itself. This includes things like what fees

can be charged, how requests for information can be made, the list of public bodies, and so on.

- *ATIPP request/request for information*: A request for any information held by a public body. The *ATIPP Act* has rules for how these requests must be handled by the public body.
- *Deputy Head*: This position is the highest-ranking public servant in each department. The name may change from department to department, but they are often referred to as the *Deputy Minister*. This position has certain authority delegated from the Minister and is ultimately responsible for all operations of a public body. They may need to be included at certain stages of the ATIPP process. It is important that discussions happen internally in each department regarding when this happens and when the Deputy Head is involved.
- *Executive Council*: The cabinet of Nunavut's territorial government.
- *Exemption*: One of several specific reasons why a public body may refuse to give out information listed in the *ATIPP Act*.
- *Head of the Public Body*: The Minister responsible for a department or public agency. The Head is ultimately in charge of everything ATIPP-related, but usually formally delegates this responsibility to one or more ATIPP Coordinators and the Deputy Head of a public body.
- *Information and Privacy Commissioner (IPC)*: An independent official in charge of monitoring the Government of Nunavut and its public bodies to make sure access to information and privacy rights are being upheld. The IPC investigates possible privacy issues and, if an applicant requests, will review the decisions of a public body relating to an ATIPP request. The IPC is the subject of Part 3 of these manuals.
- *Nunavut Court of Justice*: The consolidated Nunavut court. Following a review by the Information and Privacy Commissioner, if an applicant is unhappy with a decision made by a public body, they can appeal the decision to the court.
- *Office of Primary Interest (OPI)*: The division or person within a public body who likely has the records being requested.
- *Personal information*: Information about someone that can be identified to them specifically. Personal information is defined in Section 2 of the *ATIPP Act* and includes:
  - a) the individual's name, home or business address, or home or business telephone number;
  - b) the individual's race, colour, national or ethnic origin, or religious or political beliefs or associations;
  - c) the individual's age, sex, sexual orientation, marital status or family status;
  - d) an identifying number, symbol, or other particular assigned to the individual;
  - e) the individual's fingerprints, blood type or inheritable characteristics;
  - f) information about the individual's health and health care history, including information about a physical or mental disability;
  - g) information about the individual's educational, financial, criminal or employment history, anyone else's opinion about the individual; and,
  - h) the individual's personal opinions, except where they are about someone else.

- *Public body*: Any department of the Government of Nunavut, as well as all of the government-related organizations listed under Schedule A of the [ATIPP Regulations](#).
- *Record*: Information in any form; written, photographed, videoed, or recorded in any other way.
- *Third party*: Another person or organization who is not the applicant or a public body. Usually used in the context of ‘information about a third party’ or ‘third-party review’.

### 1.3 Purpose of the Act

As explained in Section 1 of the *ATIPP Act*, the primary purpose of the Act is to give people the right to information that is held by the Government of Nunavut or any of its public bodies. The Act also gives people the right to correct their own information, and explains the exceptions to those two rights. It also protects how personal information can be gathered and used, and finally it explains the role of the Information and Privacy Commissioner, who is an independent official in charge of investigating privacy issues and potential misuses of the *ATIPP Act*.

#### Referencing the *ATIPP Act*:

Referencing specific parts of the *ATIPP Act* is an important part of justifying decisions made by ATIPP Coordinators. Remember to:

- Use the most up to date version of the Act; and,
- Quote the Act appropriately. Use italics when writing “*ATIPP Act*”, and use quotation marks around the quoted material.
- Any document referencing the *ATIPP Act* should spell out the acronym at least once.

### 1.4 What the ATIPP Act Applies To

The *ATIPP Act* only applies to the Government of Nunavut and public bodies. It does not apply to independent organizations (such as the Water Management Board, the Surface Rights Tribunal, Inuit regional associations, etc.) or businesses. It also does not apply to the office of an MLA, the office of a minister, or the office of the legislative assembly itself.

The *ATIPP Act* applies to all records held by the government or a public body with some very limited exceptions listed in Section 3(1) of the Act. Importantly, the *ATIPP Act* focuses on *information and not records*. This has implications for the ATIPP process; applicants usually frame their requests in terms of finding records or records containing specific information, but decisions of the public body are regarding what information those records contain. We need to search and provide records that contain the requested information, which often means duplicates of a given record are found.

### 1.5 Penalties under the ATIPP Act

The *ATIPP Act* states that an employee or public body is not legally responsible (liable) as an individual for any legal consequences related to disclosing or withholding information, and for failing to give notice when the employee reasonably tried to give notice, as long as they do so in good faith.

However, if a public body or employee acts in a malicious or negligent way, they could be held responsible in the Nunavut Court of Justice for their actions or inactions. If a person intentionally collects, uses or discloses personal information in a way that is not allowed under the *Act*, they are personally responsible. Also, if a person intentionally obstructs, attempts to mislead, or deliberately does not follow legal requirements under the *ATIPP Act*, they are personally legally responsible. The punishment for breaching the act maliciously in the above manner is up to 6 months in prison and a fine of up to \$5,000.

**Reporting Wrongdoing:** If you have reason to believe that wrongdoing has occurred, it is important to report this wrongdoing to your immediate supervisor. Human Resources Manual Directive 209 has more information on the disclosure of wrongdoing.

## **1.6 Non-ATIPP (Informal) Requests**

There are other ways of getting information from the government besides an ATIPP request. For example, if an applicant asks for information that is already publicly available, they should be given that information (or told where to find it) without having to file an ATIPP request. ATIPP requests are time-consuming and involve many formal steps, so it is in our interest to help the applicant find the information outside the ATIPP process, if possible. If applicants ask a question rather than ask for information, it is best to answer the question if possible. Communications staff may be able to provide appropriate government messaging.

There are certain government documents that are required to be available outside of the ATIPP process. This list includes all government documents that help Government of Nunavut employees make decisions, help them interpret legislation, or implement programs (s. 71(1)). Though these documents must be made available outside of the processes of an ATIPP request, Section 71(2) states that the documents may be severed before release if it fits an exemption under the act (see Part 2 of these manuals for more information on exemptions).

On occasion, if the information that an applicant is looking for is not publicly available but can be found very easily and no redactions are needed, that information can be given to the applicant without having to process it as an ATIPP request. Examples include presentations from consultations, pamphlets no longer in circulation, forms, documents in an employee file (when the employee requests it), etc.

### **Places to find publicly available information:**

There are many places you can direct applicants to where information they may want are already available. It's helpful to be familiar with what your department has published. Check the legislative assembly website for tabled documents, public reports and responses to standing committees. Departmental websites also may have pertinent information, documents or reports linked.





## 2—Roles and Responsibilities

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## **2.1 Public Bodies and ATIPP**

While the *ATIPP Act* is broadly the responsibility of the Department of Executive and Intergovernmental Affairs, under the *Act*, the head of each public body – as defined in the *ATIPP Regulations* – is responsible for administering the *Act* in their department or public agency. This includes responding to requests for information that are made to them, responding to reviews by the Information and Privacy Commissioner and responsibilities related to privacy protection. In practice, many of these responsibilities are delegated out to one or more employees in the public service. The main contact in a department for ATIPP requests is known as the *ATIPP Coordinator*. This position is sometimes a stand-alone position but may only be part of an individual's job description.

## **2.2 Delegation of Authority**

Each Head authorises people in certain positions of their public body to take on responsibilities and decision-making authority required in the *ATIPP Act*, under a Delegation of Authority form. Only the head of a public body can delegate authority.

This form specifies what responsibilities and abilities people in the department have. Usually the Deputy Minister gets full authority, as well as at least one other person.

The Delegation of Authority form needs to be updated every time the head of the public body changes or ATIPP authority is given to a new position. Please see the V-drive for the Delegation of Authority form template.

## **2.3 Duties of the ATIPP Coordinator**

An ATIPP Coordinator has many different responsibilities and decision-making authorities. The most prominent one is that they are responsible for responding to, completing, and releasing ATIPP requests.

There are many duties that are involved in this process. They include:

- receiving ATIPP requests;
- assisting applicants;
- viewing and handling sensitive personal information;
- assigning requests to program areas;
- monitoring and tracking the processing of requests;
- transferring requests to other public bodies;
- meeting time limits;
- sending notifications and other letters;
- considering third-party submissions;
- calculating and collecting fees;

- redacting information under listed exemptions;
- consulting other public bodies that could be affected by an ATIPP release; and,
- responding to ATIPP requests.

Please see Section 3 of this manual for a more detailed guide on how to complete the request process, or the *Processing Guide* on the V-drive or the Government of Nunavut Intranet page.

Other responsibilities of the ATIPP Coordinator include:

- being a reference person for their public body on ATIPP and privacy-related issues;
- making sure that sensitive information that the public body holds is protected and used correctly;
- completing or assisting other employees with completing privacy breach notifications when a privacy breach happens, and notifying the ATIPP office when a breach occurs;
- responding to requests for the correction of personal information;
- preparing responses to the Information and Privacy Commissioner; and,
- notifying communication employees and other public bodies about potential ATIPP releases they should prepare for.

**Vicarious Trauma and Graphic Records:**

ATIPP Coordinators may sometimes come across records for release that contain traumatic or graphic content, e.g. coroner's records, health records, employee relations records, etc.

Government of Nunavut employees are entitled to counselling through the Employee and Family Assistance Program. They can be contacted at the following number:

1-800-663-1142

**2.4 ATIPP Office**

The Territorial ATIPP Office, based out of the Department of Executive and Intergovernmental Affairs, is the central reference point for all public bodies and their ATIPP Coordinators. It is responsible for providing support and training for ATIPP Coordinators, developing forms and documents to assist with processing ATIPP requests, assigning tracking numbers for ATIPP requests, and ensuring that ATIPP requests are being processed in a consistent way across departments. The office is also responsible for creating the ATIPP Annual Report and being the point of contact for cabinet and the rest of the government. If you are an ATIPP Coordinator and you need advice or help with something, you are encouraged to contact the ATIPP office at [atipp@gov.nu.ca](mailto:atipp@gov.nu.ca). You can also contact the Legal division in the Department of Justice, which can provide advice on legal issues (see below).

The head of the ATIPP office also chairs the ATIPP Coordinators Committee, which is a regular meeting of ATIPP Coordinators, where they discuss and review ATIPP-related matters.

## 2.5 Legal Counsel

The Department of Justice has a Legal and Constitutional Law Division, staffed with lawyers, who are responsible for providing legal advice and opinions to the Government of Nunavut. Due to the complex nature of the *ATIPP Act*, you may have a question regarding the administration of the *Act*. It's normally considered a best practice to speak with the Territorial ATIPP Office first as they keep some of the previously provided legal opinions and may have already dealt with the issue. If you can't resolve your question at this level, you can request a formal legal opinion from the Director of the Legal and Constitutional Law Division, who will then assign your question to one of the lawyers on staff.

## 2.6 Right of Access

Section 5(1) of the *Act* states that anyone has the right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant. There are no restrictions on who may make a request, and the applicant can be any person or organization anywhere in the world. This is a quasi-constitutional right and any deviation from this right must be appropriately justified under the terms of the *ATIPP Act*.

## 2.7 Custody and Control of Records

Section 3(1) of the *ATIPP Act* states that when an ATIPP request is made, the ATIPP Coordinator must provide "all records in the custody or under the control of a public body" that are relevant to the request. This essentially means that if the public body owns or has access to the record and the record is relevant to the request, the public body must provide it to the applicant (unless it falls under an exemption).

If two public bodies have custody or control over the same record or duplicate records, both public bodies are required to provide it, unless otherwise specified by the applicant.

If there are records that are relevant to the request but are held by another public body, the public body must transfer all or part of the ATIPP request to that public body. See Section 3.8 of this manual for details on transferring requests.

### Test for Control

The Supreme Court of Canada adopted a two-part test to assess whether records are "under the control" of a public body:

- a) *Do the contents of the document relate to a departmental matter? and*
- b) *Could the government institution reasonably expect to obtain a copy of the document upon request?*

Relevant factors must be considered in order to determine whether the government institution could reasonably expect to obtain a copy upon request. These factors include the substantive content of the record, the circumstances in which it was created, and the legal relationship between the government institution and the record holder.

On occasion, a record that is housed by a public body may not be under its custody and control, and a record in the custody and control of a public body may be in a location outside of the public body. In the case of the Nunavut Records Centres, for example, public bodies send documents to the records centre, but still maintain custody and control of them.

Records transferred to the Nunavut Archives are not under the control of a public body and are therefore not subject to ATIPP requests.

## **2.8 Language of Request and Response**

**Right to language of choice:** While most requests are made in English, an applicant can make a request in any of the four official languages of Nunavut and has the right to receive all communications and records in that language (see the next paragraph).

Section 7(3) of the ATIPP Act requires that any requested records need to be given to applicants in whichever official language they wish, as long as the record already exists in that language; if not, the record does not need to be translated unless the coordinator believes that translating that record is in the public interest. Applicants do not pay a translation fee.

**Release of available language:** If a record is being translated and it will not be ready before the normal due date of the ATIPP request, an extension of the timeline to respond to the applicant can be granted. This does not mean the entire request is on hold, and the public body should provide any other records available to the applicant while they're waiting on the translation to be completed. The untranslated document should be given to the applicant in the meantime, or they should be given the opportunity to view the record themselves. For more information on extensions, please see [Section 5.4](#) of this manual.

**Consent to share name:** If translating records or request applications requires you to share the name or other identifying information of the applicant with a translator, you should first request their consent. Section 5 of the ATIPP Act Regulations states that consent must be:

- (a) in writing; and,
- (b) must specify to whom the personal information may be disclosed or how the personal information may be used.



### **3—Processing an ATIPP Request: Administration and Preparation**



### 3.1 Introduction

Section 3 of this manual looks at the administration and preparation of an ATIPP request in significant detail. It is important throughout our work on ATIPP requests to remember that the applicant-coordinator relationship is a customer service type of relationship. Individuals requesting information are exercising a legal right, but are also accessing a service. The more effort that goes into fostering a positive relationship with applicants, the better the outcomes are for all parties.

### 3.2 Making a Request and Receiving a Request

An ATIPP Coordinator will normally receive a request one of three different ways:

1. directly from the Applicant;
2. from the Territorial ATIPP Office; or
3. as a transfer from another department.

#### Directly from the Applicant or from the Territorial ATIPP Office

The first step of an ATIPP request starts with the applicant making a request to the public body they think holds the records they're looking for. The applicant does not have to guess correctly which public body has the records; if a public body receives a request for information for another public body, they are required to transfer it to the appropriate one. Requests may also come into the Territorial ATIPP Office, at which time they will assign it to the appropriate department.

#### **No Wrong Door**

Part of being a public servant in a democratic government is the idea that there is no wrong door for individuals who want to access programs or services from their government.

We are all in our position to serve the public. If you do not know the answer to an applicant's question, it is your duty to find out the answer or to find out who knows the answer. Referring people to other coordinators or offices should be done to a minimal degree. Confirm your referral before you send a member of the public somewhere else.

**Requests in writing:** While the *ATIPP Act* requires an applicant to make their request in writing, practically this may not be possible for all individuals due to technology or capacity. As access to information is a quasi-constitutional right, if an applicant cannot make a request in writing, we should provide reasonable accommodations.

Section 3 of the regulations sets out when it is appropriate to receive an oral request for information.

**Request form:** For written requests, the preferred format is the request form that is currently available (found on the [ATIPP intranet page](#), ATIPP Internet page or V-drive). This form ensures that we collect the necessary information

needed to respond to the request. You can use your discretion to accept any request made in writing, as long as the document contains enough information to respond to the applicant. If the request does not contain enough information, our duty is to work with the applicant to fill out the information. This can be done by sending them the form to fill out or by asking specific questions. Both physical and electronic requests for information are accepted.



**Providing copies or examination in person:** Under Section 6(3) of the *ATIPP Act*, applicants can choose whether they want to examine the records firsthand or to receive a copy of them. Applicants usually request a copy of the records, but in some cases where the record is an existing physical document they may want to examine it themselves.

If an applicant reviews a record in person, you should sit with them to ensure no other records are accessed and that the applicant has everything they need. The applicant's ability to take notes, photos or copies depends on the record being accessed. It is important to discuss this with the applicant beforehand and to ensure there is a common understanding going into the room.

**Language of choice:** An applicant can make a request in any of the four official languages of Nunavut. Translation services are available if needed. Each department has a translation coordinator who will be able to upload your translation to the Nunavut Translation Bureau. This can take some time so it's important that you send the request for translation as soon as possible.

#### Transfer from another public body

Applicants sometimes do not know what public body to send their request to, or their request may include information in several public bodies. The *ATIPP Act* requires us to transfer the relevant parts of the request to the appropriate public body once we've received a request. More information on this process can be found in [Section 3.8](#) below.

**Consent:** Lawyers, family or other interested parties may request what would otherwise be a request for personal information of a third party. It is important that access to these records is only given if there is informed consent of the third party.

According to Section 5 of the *ATIPP Act*, consent:

- (a) must be in writing and,
- (b) must specify to whom the personal information may be disclosed or how the personal information may be used.

### **3.3 Anonymity**

**Anonymity required by law:** Section 6.(1) of the *ATIPP Act* says that the identity of an ATIPP Applicant, by law, cannot be shared with anyone other than someone who is authorized to accept an ATIPP request in the public body, and where necessary, the Information and Privacy Commissioner. You will find information on who is authorized to accept an ATIPP request in the delegation of authority for your public body.

**Exceptions:** There are only two exceptions to this rule: if the request is for personal information, or if you can't respond to the request without sharing the name of the individual and the individual has consented to its disclosure. Even in this situation it is expected that you only share the name of the applicant to the extent necessary to respond to the request.

**Limitation:** The requirement for anonymity persists until the records are provided to the applicant. The applicant's name can be revealed after the ATIPP request is finished, however it can only be done to prevent harm to a public body or to allow a public body to enforce a legal right that it may have against any person.

### 3.4 Tracking Numbers and Due Dates

If you've received a request directly from an applicant or as a transfer from another department, you must send the request to the Territorial ATIPP Office. They will assign a tracking number and, if payment has been received (see 3.7 below), a due date.

If the ATIPP Office receives the request, when they provide it to the responsible department or departments, they will provide a tracking number and due date at this time. The due date, as per Section 8 of the *ATIPP Act*, is 25 business days after it was received.

#### **How Tracking Numbers are Generated:**

Every request tracking number starts with the same digits – 1029-20, this is the Administrative Records Classification System (ARCS) number for ATIPP requests set by records management. The departmental acronym and two other numbers are used to generate the rest of the number. The two other numbers represent which request it represents for the department that year, and, which request it represents for the Government of Nunavut that year. For example:

1029-20-EIA05127 – this request is the fifth request the Department of Executive and Intergovernmental Affairs has received, and the 127<sup>th</sup> request received overall by the Government of Nunavut.

The Territorial ATIPP Office keeps a master list of all ATIPP requests for tracking purposes.

### 3.5 Assisting the Applicant and Determining the Scope of Request

**Duty to Assist:** ATIPP Coordinators are responsible for assisting applicants, as stated in Section 7(1) of the *ATIPP Act*. That means responding to applicants openly and in good faith as soon as possible to do so, as well as talking with them about what information they're asking for. When an ATIPP Coordinator receives a request for information, ideally the request is specific and limited enough that the coordinator can start work on it immediately.

**Working with the applicant:** Frequently, however, applicants make broad requests, not understanding the amount of records they would receive would be much larger than they want. These large requests take more time and can be more expensive than smaller requests, and for these reasons it is a good idea, for both the applicant and the coordinator, to narrow the scope of the request. If it is not clear what records the applicant is looking for, it is also the coordinator's responsibility to reply to the applicant, asking them to clarify their request. The coordinator can proceed with a request only when it is clear what records the applicant is looking for (see Section 6(2) of the *Act*).

**Narrowing Scope:** Examples of ways to narrow scope include:

- asking if the applicant is willing to narrow their request down to a specific event, incident or document rather than using “any and all documents related to [...]” wording;
- asking the applicant if they’re okay with you exempting duplicate documents from the request (e.g. if an e-mail is sent to two individuals, to only provide one copy of that e-mail rather than a copy from both responsive individuals).
- asking the applicant if they’re okay with you exempting mass e-mails (greater than 10 individuals in the “To:” line);
- asking for a list of individuals or positions/titles they want you to search;
- offering a document that outlines the scope of what is available, which the applicant can then pick and choose from (e.g. the table of contents of a briefing note binder); or
- asking if the applicant is willing to narrow the time frame (one year vs. three-to-five years).

It’s important to remember that most of the time applicants also do not want unrelated documents, duplicates, or already publicly available content. If you talk to them about their needs, they are usually willing to work together to identify the specific records they want access to. It can help to explain what fulfilling the request will look like and what records you anticipate being caught up in the search terms (that aren’t related to the search).

**ATIPP Coordinators are impartial:** Also important to note is that often applicants are requesting records due to workplace conflict, in response to a serious situation, or under stressful circumstances. It’s important to remind them that we are impartial in the process and our role is to facilitate their request for information. We do not represent any one person but rather administer the ATIPP Act by the letter of the law. It is important to be objective and, if the applicant is upset, not to argue with the applicant or to become defensive.

**Duty to create a document:** Not only are applicants able to request documents that are already created, the Government of Nunavut has an obligation to create a document when it is possible to do so. Section 7(2) of the *ATIPP Act* sets out a two-part limitation to this legal duty:

- (2) *The head of a public body shall create a record for an applicant where*
- (a) *the record can be created from a machine-readable record in the custody or control of the public body using its normal computer hardware and software and technical expertise; and,*
  - (b) *creating the record would not unreasonably interfere with the operations of the public body.* [emphasis added]

**Cost Recovery:**

If data is stored and managed by a third-party contractor, e.g. court data, we can assess fees for the actual cost of preparing the report from the available data.<sup>1</sup>

Before you request the work of the contractor, you should let the applicant decide whether or not they want to proceed.

Like with all fees there may be cause to waive them in certain circumstances.

<sup>1</sup>*Please see the manual on assessing fees for more information.*

**Exemptions:** As the wording of the provision is that you “shall create” a record, this means that it is not discretionary, and you must justify your decision not to create a record that is requested using the criteria above. What this means practically is that if you have an existing database, you must pull information from that database upon request. Ideally you would do this using a function of whatever computer software the Government of Nunavut is currently using to store the information. There are circumstances where there is no function in a computer that allows this kind of report to be created; in these cases you’ll need to determine if manually extracting the information from the database or electronic record would interfere with the operations of the public body. There is currently no established test to determine this, but it is rather an exercise of discretion taking into account the number of data points and the estimated amount of time and personnel necessary to do the work.

### **3.6 Letter of Acknowledgement**

The coordinator should also formally acknowledge the request with a letter to the applicant. The letter restates the applicant’s request and that the public body has received the request, as well as any of the following:

- that the request is unclear and needs clarification before the request can be processed;
  - You should first call the applicant and discuss the request before sending a formal letter.
- that the \$25 fee is needed before the request can be processed (for general records);
- that the public body will be unable to respond to the request within the normal 25 business days and is taking an extension (see Section 5.4);
- that processing fees are estimated to be over \$150, and that half of the estimated fees must be paid before the request can move forward.

**Ensure the scope is understood:** This can also be an excellent time to put into words the negotiated scope of the request as you understand it following consultation with the applicant. Regardless, if you’ve discussed narrowing the scope with the applicant, you should provide something to them in writing so that you ensure that both parties are of the same understanding.

Examples and templates of these letters are available on the V-drive.

### **3.7 Application Fee and Fee Estimate**

There is a \$25 dollar application fee for all requests for general information and no application fee for someone to access or correct their personal information.

If the applicant is requesting general information, additional fees may apply to the work spent on that request. If the coordinator believes the cost of the work will amount to more than \$150, the coordinator should provide the applicant with an estimate of the total fees. The applicant must pay at least half of those estimated fees before work continues on the request. In the time between the fee estimate being sent and the applicant paying the required amount, the request

is effectively paused. The due date for the request may change, depending on how many days go by without the applicant paying the fee.

The fee assessment letter should be sent as soon as the coordinator believes fees will exceed \$150. This often happens in the initial acknowledgement letter, but can also be decided later on in the process.

**When is something general or personal?** It is sometimes not clear whether a request is for personal or general information. This normally comes up when former or current Government of Nunavut employees request information from their time working for the government. A general rule of thumb is that work done while a Government of Nunavut in relation to the duties of that employee is general information, but information related to their human resources file, performance, or opinions about them would be considered personal information.

**Splitting the request:** If a request has both personal and general information you can inform the applicant that you're splitting the request. You'll continue to process the request for personal information but will not gather, review, work on, or process general information until \$25 has been received. It is recommended that you request an additional tracking number and due date for the separated section.

For a comprehensive guide on how to calculate fees, please see **Part 3** of these manuals.

### **3.8 Transferring a Request**

If, at any point during the process of handling an ATIPP request, an ATIPP Coordinator believes that another public body has information covered by the request, a transfer to that public body must be made. Transfers can be done as a full or a partial transfer, and should be done as soon as they are identified.

A full transfer involves giving the whole request to another public body. This often happens at the beginning of a request, if the applicant has made their request to the wrong public body. A partial transfer gives a specific part of the request to another public body.

#### **From the ATIPP Act:**

*Transferring request to another public body*  
12. (1) the head of a public body may transfer a request for access to a record and, if necessary, the record to another public body where

- (a) the record was produced by or for the other public body
- (b) the other public body was the first to obtain the record; or
- (c) the record is in the custody or under the control of the other public body.

*Notifying applicant of transfer*

(2) where a request is transferred to another public body

- (a) the head of a public body who transferred the request shall notify the applicant of the transfer without delay; and
- (b) the head of the public body to which the request is transferred shall respond to the applicant in accordance with Section 9 not later than 25 business days after the request is received by that public body unless this time limit is extended under Section 11.

**Sending two letters:** When transferring a request, the coordinator must write a letter to both the applicant and the coordinator of the other public body stating exactly what parts of the request are being transferred (a requirement under Section 12(2) of the *ATIPP Act*). When receiving a transfer, the coordinator treats it like a completely new request, and must follow any relevant steps like narrowing the request, asking for the \$25 application fee, and sending an acknowledgement letter. The receiving department has the full 25 business days to respond to the applicant.

Template transfer letters can be found on the V-drive as well as the ATIPP intranet page.

**4—Processing an  
ATIPP Request:**



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## 4.1 Introduction

The process of retrieving or searching for records largely depends on who in the department has access to the records, and the sensitivity of the records. The general rule is that the least invasive measures to gather records should first be used before more invasive measures are attempted. It's important to remember that employees are allowed to use their Government of Nunavut e-mail accounts for personal business and they are entitled to a limited expectation of privacy. The ATIPP Coordinator has to balance this expectation of privacy with ensuring access to the information. Below is more information on how this can be done.

## 4.2 Office of Primary Interest and Search Declarations

**How to access the responsive records:** For requests that do not include sensitive information, it is expected that the ATIPP Coordinators request the records from the responsible person in the department. There is a short document available to provide to the responsible person, sometimes called the *Office of Primary Interest* or *OPI*, to explain the process and expectations. It is helpful to be as explicit as possible when requesting this information, ensuring the responsible individual:

- searches all folders and sub-folders of their e-mail account;
- searches the sent items folder;
- searches their U-drive, Y-drive and One Drive, and any files on the V-drive they may have information stored on; and,
- Any physical records that are not available electronically.

**Search declaration:** It can be helpful to have the responsible individual fill out and sign a prepared search declaration form. This ensures there is a common understanding of their role and responsibilities related to the ATIPP process. A template is available on the V-drive or from the Territorial ATIPP Office. This is important when:

- it is someone's first time providing records for an ATIPP request;
- the records are sensitive; and/or,
- the applicant has requested records in the custody of a multitude of people in the department.

## 4.3 Sensitive Requests

**Considered sensitive:** Sensitive requests occur when the responsible person might not want to give some of the records they hold. A request is considered sensitive when any of the following conditions are met:



- The request is for personal information, where the applicant is seeking correspondence from an employee that could be considered inappropriate, damaging or harmful to that employee's reputation.
- The request for personal information may include employees expressing opinions of the applicant or others.
- The request contains politically sensitive information that may damage the reputation of an employee or the Government of Nunavut.
- The employee is resistant to access to information and has indicated they will not comply with the process.

**Confidentiality:** It is vitally important, for sensitive requests, that you do not share details of the request with anyone other than the deputy head or head of a public body until such time that a request for electronic information has been done for every individual who may have records related to the request.

**Request for electronic data in support of an ATIPP request:** The first step when you receive a sensitive request is to prepare the Request for Electronic Data forms for all individuals who have information pertaining to the request. These forms will then be provided to the Territorial ATIPP Office who will send them to the appropriate person at the Department of Community and Government Services. More information on this form can be found below in Section 4.4.

Once the Information technician at the Department of Community and Government Services has created snapshots of the accounts, they'll hold them for the ATIPP Coordinator's use, but will not provide them until requested.

**Approaching the responsible individual:** Once the above has been done, the ATIPP Coordinator will then approach the responsible individuals in their department and follow the normal ATIPP procedure, ensuring that search declaration forms are provided and filled out and that the responsible individuals have any support they may need in retrieving the records. The ATIPP Coordinator should also at this time ensure that their deputy head is aware of the request. Now would be a good time to prepare a briefing note with all relevant information should it be required.

#### What are discrepancies?

Things to look out for include:

- One individual not providing a record when other responsible individuals have provided the same record;
- Correspondence referencing attachments or previous correspondence that is not in the records provided to the applicant;
- A gap in page numbers, e.g. a document that goes from page 3 to page 10, meaning that pages 4-9 are missing.

**Reviewing records:** The rest of the request will proceed as normal unless the ATIPP Coordinator notices discrepancies in the records provided. Discrepancies are often innocuous mistakes due to technological issues or accidental omissions, so it is expected that you will first speak with the responsible individual and request the missing records. If attempts to follow up with the responsible individual prove fruitless, the ATIPP Coordinator will access the snapshots requested in the requests for electronic data and they will do a manual search of the records.

**If you suspect wrongdoing:** if you suspect wrongdoing it is important to notify the deputy head as soon as possible. Human Resources Manual Directive 209 has more information on the disclosure of wrongdoing.

#### **4.4 Request for Electronic Data**

**What is it?** A Request for Electronic Data is a form that requests access to the electronic files of a specific employee. This allows an ATIPP Coordinator to take a look at the files and e-mails of a responsible individual directly and doesn't depend on the employee providing records to the coordinator. This could be done for several reasons:

1. When an employee no longer works for the Government of Nunavut or is on long-term leave and therefore can't provide the records;
2. When the request is sensitive or you believe the responsible individual does not want to comply with the ATIPP process (see Section 4.2); or,
3. With consent of the responsible individual if they do not have the time or capacity to do the search themselves.

**The files:** To get access to the files, complete a Request for Electronic Information form and send it to the Territorial ATIPP Office, who will send it to the appropriate person in the Department of Community and Government Services. When the relevant information has been collected, it will be sent to you. The information provided is normally two items, the files stored on the employee's U-drive (the personal drive only they have access to), and the Outlook data file containing the employee's e-mails.

How-to guides on accessing Outlook data files can be provided upon request or found on the V-drive. Additionally, copies of the Request for Electronic Data form can be found on the V-drive.

#### **4.5 Manual Searches of Outlook Files**

**Folders to search:** Microsoft Outlook is the program the Government of Nunavut uses for its e-mail exchange. When searching through e-mails it is important the following folders are searched:

- The Inbox and all subfolders.;
- The Sent Items box and all subfolders;
- The Deleted Items folder; and,
- The Recoverable Items folder.

**Search folders:** A quick and easy way to do this is to use the "search folder" function of Outlook. By right clicking on this folder and selecting "create new search folder" you can search for "mail with specific words". You can then click the box that says "choose" to enter the specific

search terms. This function searches all folders and subfolders, saving you having to do so with the search bar provided in Outlook folders.

You will need to either print e-mails or save them as a PDF in order to provide them to the applicant and redact any exempted information for disclosure.

**Save yourself some time:**

DO NOT try to save e-mails as .PDF files one by one. This takes a very long time and it is a very labour-intensive process. You can do it this way, but there is a much faster, easier and convenient way to do so.

Drag-and-drop all relevant e-mails to a single subfolder in your Outlook account in a location of your choosing. Click on this folder and choose “convert [name of folder] to Adobe PDF”. This will create a portfolio PDF file of all of the e-mails. It can be combined into one file using the “Create” function of Adobe and choosing “combine files into a single PDF”.





**5—Processing an  
ATIPP Request:**

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## 5.1 Introduction

Section 5 of this manual looks at the process of preparing ATIPP documents for release. This process will somewhat depend on your own internal working processes and whether you process records manually or electronically. More resources have been developed as step-by-step technical guides for using software to review and redact records. They can be found on the V-drive or by request from the Territorial ATIPP Office.

## 5.2 Compiling and Organizing Documents

**Creating copies:** When all the documents have been collected, they need to be prepared before they are reviewed for redactions. There need to be three copies of documents: 1) the original documents, 2) the working copy that the ATIPP Coordinator edits for redactions, and 3) the finalized copy for release to the applicant. If the files are all electronic, this is very simple to do.

Regardless of whether the documents are physical or electronic, this is an essential step in the ATIPP process for the sake of transparency. If the documents are ever audited (as in a review by the Information and Privacy Commissioner), it is important to have the original documents intact along with the other two versions so that it's clear what redactions were made and that the process was done correctly.

**Numbering the document:** The documents also need to be numbered so that page numbers can be referred to easily, both during the creation of the exemption rationale and if there is a review by the Information and Privacy Commissioner. This can be done by compiling all documents into a PDF, selecting Edit PDF, and adding a header or footer.

**Physical copies:** When reviewing documents by hand, page numbers are added at the bottom with a pen. It is recommended that you use a blue pen so you can easily distinguish between the original un-redacted copy and the working copy (the photocopy will be in black and white).

### Electronic Copies and Review:

The main software in use in the Government of Nunavut that allows for redactions and editing of PDF documents is Adobe Acrobat DC (Document Cloud). If you have the old Adobe Acrobat (the less functional program) or the basic Adobe Reader, you will need to request a program licence from Help Desk.

Electronic review and redacting is recommended when possible due to the efficiency and accuracy of electronic reviews. There are many functionalities in Adobe Acrobat DC such as the "organize documents" tool that can make your review much simpler.

### 5.3 Assessing Records

After all the records have been collected, the first step is to review the records and ask several questions:

- Does it appear that all relevant records have been found and do they appear to satisfy the request? If not, what records are missing and who may have them?
- Does it appear that someone is not providing records they have been asked to provide? If so, a Request for Electronic Data form for their account must be completed. See Section 4.4.
- Can some or all of the records be released immediately (i.e. contain no sensitive information, or are already public documents)? If so, release them.
- Is there evidence that another public body has relevant records? If so, part of the request should be transferred to them. See Section 3.8.
- Does it seem that there are people in the public body who have relevant records but have not yet been asked to provide them?
- Do other public bodies or governments need to be consulted before these records can be released? If so, determine if you want to share parts of the relevant records and then consult with them. See Part 2 of these manuals, Section 2.7.
- Do the records contain third-party business information or personal information that will require the third parties to be notified? If so, determine if you want to share parts of the relevant records and then consult with them. See Section 5.5.
- Will the time required to respond to the request likely exceed the 25 business day time limit? If so, determine if you are eligible to take an extension. See Section 5.4.
- Will additional fees be assessed for the processing of the request? If so, notify the applicant with a fee assessment letter. See Section 3.7.

When these questions have been answered, any appropriate steps should be taken (e.g. transferring part of the request, notifying third parties, taking an extension, assessing fees, etc.). If none of these apply, the next steps are found in Section 5.6.

### 5.4 Extensions

When the ATIPP Coordinator decides an extension needs to be taken, they must first make sure that the reason for extension is allowed for under the *ATIPP Act*. The Act lays out five reasons for extensions under Section 11, which will be discussed in greater detail below. The reason for the extension will help determine how long to take the extension can be taken for, as the act allows for the extension to be for a time that is “reasonable”, which depends on the context of what information the records contain and how long has already been spent on the request.

**Reason 1 - Not enough details:** if you’ve started the request and you realize that you require more information from the applicant to identify the record they are requesting; you can also request an extension of time. Normally you would review the request ahead of time before a tracking number and due date is assigned, and identify that you need clarification from the

applicant because Section 6 requires the applicant to provide enough information for you to identify the records they are requested; however, once the request has started, you can request more time as you wait for additional details from the applicant by use of Section 11(1)(a). The time that would be “reasonable” under this extension would depend on the timeliness of the applicant’s response to your request for additional details.

**Reason 2 - Large number of records:** If the extension is because there are a large amount of records to be searched, reviewed and prepared for release (Section 11(1)(b)), determine how long it will take to find all of the relevant records, review the records, and prepare them for release. As a general rule of thumb, an additional 20 business days is the normal extension period for extensions of this type. A second additional 20 business day extension can be required if you cannot complete the request under this timeline. Every additional 20 business day extension becomes increasingly difficult to justify to the Information and Privacy Commissioner or the Nunavut Court of Justice, so these should be used sparingly. Every effort should be made to complete the request within the first extension period.

**What is a large request?**

What constitutes a “large request” is a relative measurement, however, if you are dealing with hundreds of pages it likely isn’t considered large, but if you’re dealing with thousands of pages it likely is. There are grey areas, for example a request with 750-1000 pages may or may not qualify as a long request, depending on the complexity of the records.

**Reason 3 - Third party notification:** If the extension is due to consulting with a third party or another public body (Section 11(1)(c)), the extension only applies to the information that is the subject of the notification or consultation. The time for extension should also be for as long as it takes to receive an answer. For notifications this would be 90 days as per section 27 of the *ATIPP Act* (for more information on third party notifications see section 5.5 below). For non-legislated consultations a good starting place is 20 business days.

**Reason 4 - Review by the Information and Privacy Commissioner:** If the extension is taken because a third party is appealing to the Information and Privacy Commissioner, the decision of the public body to disclose or not disclose records (Section 11(1)(d)) the appropriate timeline would be at the conclusion of her review. All other records that do not pertain to this review should be released under the original 25 business day timeline.

**Reason 5 - Extension for translation:** The request can also be extended if a document is being translated for the applicant, and translation will take longer than the time limit (Section 11(1)(e)). In this case, the applicant must be provided with a copy of the document in the original language during the original time limit. The time for extension is the estimated time frame provided by your departmental translation coordinator.



## 5.5 Third Party Notifications

**Notifying third parties:** The *ATIPP Act* has a defined procedure to use if the public body is thinking of releasing certain information would be an unreasonable invasion of an individual's privacy, or if there is business information of a third party that we are considering releasing. This procedure requires the public body to notify the affected parties and ask for "representations" on the release of records. When the need for a third-party notification is identified the following information must be provided to the affected third party:

- a) that records have been requested that may affect their right to privacy;
- b) a description of the records;
- c) that the third party has 60 days after the notice is given to consent to the release or to provide representations as to why the records should not be disclosed;
- d) a copy of the relevant records being considered for disclosure.

**Notifying the applicant:** The applicant must also be provided with a notice which states that there are records that contain sensitive personal information of a third party or business information of a third party that could affect their interests and that the third party has been given an opportunity to make representations regarding their release.

**Release of other records:** It's important to remember that the third-party notification does not put the entire request on hold, only the records that contain the personal or business information. The rest of the records must be released under the original 25 business day timeline.

**Decision remains with the public body:** The public body ultimately makes the decision regarding whether or not to release the records in question, and bases this decision on the representations provided by the third party as well as other factors such as the public interest, possible harm to the third party, etc.

**Notice of decision:** After making a decision, a letter must be sent to both the applicant and the relevant third party notifying them of this decision. The letter must provide written reasons for this decision, and the contact information for the Information and Privacy Commissioner in case the third party or applicant does not agree with the decision.

**Review by Information and Privacy Commissioner:** If a coordinator decides to release the records, they must wait 30 days to release the records to allow the applicant or third party to request a review of the Information and Privacy Commissioner. See Part 3 of these manuals for more information on Information and Privacy Commissioner reviews.

## 5.6 Reviewing for Redactions

**Reviews to be detailed:** Once all the files have been collected and the documents have been numbered and copied, the information needs to be gone over line-by-line and word-by-word to see if there are pieces of information that are subject to an exemption (Sections 13 to 25.1 of the *ATIPP Act* – see Part 2 of these manuals for more information). Pages or paragraphs

cannot be severed entirely just because some of the information is subject to an exemption. Only the parts of the page or paragraph that are subject to an exemption can be severed.

**Default is release:** It is useful to first scan through the document and highlight any pieces of information that *may* be eligible for redaction, rather than redacting the information immediately. This is because most reasons to not disclose information listed under the *ATIPP Act* are not mandatory and require the coordinator to use their discretion to determine if there is a specific harm in releasing a record. Applicants have a right to information and the default legal responsibility on the public body is release. **Any deviation from this obligation must be properly and robustly justified.**

**Information and not form:** The *ATIPP Act* does not deal with classes or types of records, it deals with information. Just because something is marked ‘confidential’, ‘solicitor-client privilege’ or ‘secret’ does not mean that it is so. You must review the document and only remove the information in it you are specifically authorized to under the *ATIPP Act*. Every piece of information you redact must be marked with the relevant section of the *ATIPP Act* you are using to exempt it, and a full explanation must be provided in an exemption rationale. This principle is examined in more detail in Part 2 of these manuals.

## 5.7 Redacting Documents

After the coordinator identifies information that might fall under an exemption, they need to determine if the exemption applies. This is the topic of Part 2 of these manuals, which covers these aspects in much greater detail than this short summary.

As a coordinator looks at each piece of information that they have labeled for possible redaction, they must first note if the relevant exemption is mandatory or discretionary. If it is mandatory, they must remove the information. If it is discretionary, they must use their judgment to decide whether to remove the information or not.

For more detail on each specific exemption listed in the *ATIPP Act* and how to determine if each one applies, see Part 2 of these manuals.

<u>Redacting Manually</u>	<u>Redacting in Adobe</u>
Redactions will be made on the second copy, the working copy. <ul style="list-style-type: none"><li>- Use white-out to redact information that is subject to an exemption (the white-out tape is particularly useful for this).</li><li>- Write in blue or red pen on the whited-out information the section number of the exemption used to justify the redaction.</li><li>- (Optional) if there are large white spaces or blank pages that are part of</li></ul>	Redactions will be made on the second copy, the working copy. <ul style="list-style-type: none"><li>- Sever information subject to an exemption in Adobe with a white fill color,</li><li>- Add red overlay text of the appropriate <i>ATIPP</i> exemption,</li><li>- Keep a running tally of which pages you severed information on, sorted by the exemption used.</li></ul>

<p>the request, add a sentence in pen that says “page printed as blank”.</p> <ul style="list-style-type: none"><li>- If you make a mistake, recopy the page from the “original” copy.</li><li>- Keep a notepad with page numbers of where you’ve made redactions, sorted by which exemption you used.</li></ul>	<p>(resources with more step-by-step instructions how to use the technology are available on the V-drive or by request to the Territorial ATIPP Manager)</p>
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**6—Release Process**

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## 6.1 Introduction

This section looks at how to release documents to the public after they have been checked for any necessary redactions. Internal approvals of the deputy head, directors or supervisors is at the discretion of the individual public bodies. Integral discussion should take place regarding expectations related to briefings and approvals so that there is a known and agreed upon process.

## 6.2 Letter of Release

**Contents of Response:** Once the records have been redacted and are ready for release, the coordinator should provide a formal response to the applicant. This usually consists of a release letter stating how many records are being provided to the applicant, and an exemption rationale with in-depth detail of what information has been severed and why. Occasionally, an ATIPP request will come up with no relevant documents. In these circumstances it is relevant to detail how information was searched while noting it was done thoroughly; often applicants are looking for specific documents they are certain exist so when a search comes up empty, they are hesitant to believe you if you do not justify your actions.

Under Section 9 of the *ATIPP Act*, if information has been redacted, the applicant also must receive:

- the reason for refusal and the provision of the *ATIPP Act* under which the refusal is based;
- the contact information for someone in the public body that can answer any questions they may have;
- the contact information of the Information and Privacy Commissioner; and,
- information regarding the applicant's ability to request a review under Section 28 of the *ATIPP Act* must also be included.

**Minimum standard:** Each redaction must be properly justified in an exemption rationale. This rationale must have, as a minimum, the following information:

- A summary of what was severed.
- Why the information fits the exemption (e.g. 'the information is exempt because it contains the third party's personal information and disclosure would be an unreasonable invasion of privacy for a reason specified in subsection 2').
- (For discretionary exemptions) Why the public body is exercising its discretion not to release, and what harm is anticipated if the information was to be released.

**Grouping page numbers on the exemption rationale:** While you can group some redactions—for example, if you redact an individual's name and address in multiple places throughout the request—it is recommended that you avoid doing so when possible. All decisions related to discretionary exemptions should have as much rationale as possible both to meet our

requirements under the *ATIPP Act* and to inform reviews of the Information and Privacy Commissioner if they occur. The less information you provide to an applicant, the more likely a review is to occur.

If you are having difficulty rationalizing your use of an exemption, it may mean that you should release the information. The Territorial ATIPP Office and the Legal Division may be able to provide you more information or support in this area. Remember, the default is disclosure as applicants have a right to access information.

When these documents are created, they should be given to the applicant along with the relevant records. A copy should be retained in case of a review of the Information and Privacy Commissioner.

Examples of release letters and exemption rationale documents can be found on the V-drive.

### **6.3 Releasing Records, Communications, and Further Discussions**

Before releasing records, it is a good idea to contact the communications section of your public body. ATIPP requests can sometimes contain sensitive information and communications employees will be better prepared to handle any news stories or public relations issues that could develop after an ATIPP release. If there are no privacy concerns, sharing a copy of the released records with communications may be useful, or even a summary of the information being released.

Releases of sensitive information may need to be reviewed by the deputy head before release. It's important that you have an agreed-upon internal process for reviews and approvals of ATIPP requests. This should be updated on a regular basis as transition occurs in positions that have responsibilities for ATIPP.

The ATIPP Office has created a guideline to help each department decide on how it wants to involve communications and senior officials. This memo can be found on the V-drive or directly from the ATIPP Office.