



## Information for the public about their rights under Yukon's access to information and privacy laws during COVID-19

April 23, 2020

In March and April of 2020, the Chief Medical Officer of Health implemented emergency public health measures in Yukon to prevent the spread of COVID-19. These measures include rules about physical distancing and the closure of certain businesses. In response, many employees at public bodies (under the *Access to Information and Protection of Privacy Act* or ATIPP Act) and health care custodians (under the *Health Information Privacy and Management Act* or HIPMA) began working remotely. Some businesses were required to close. The result of implementing the COVID-19 measures has, in some cases, impacted service delivery by public bodies and health care custodians. Among the services impacted are their access to information programs.

In an effort to ensure Yukoners are able to exercise their right to access information during these challenging times, the Information and Privacy Commissioner (IPC) has been working with the ATIPP Office at the Yukon government to establish a plan for public bodies to manage access to information requests (ATI requests) while the COVID-19 measures are in effect. The IPC has also discussed management of ATI requests with the Department of Health and Social Services, which is a custodian under HIPMA. Additionally, the IPC issued guidance for custodians about how to manage their obligations under HIPMA with a focus on managing ATI requests during the service disruptions caused by implementing the COVID-19 measures.

In addition to the foregoing, the IPC has recently issued a number of documents to support public bodies and custodians in meeting their privacy obligations while the COVID-19 measures are in effect.

### **What you need to know about exercising your rights**

The IPC is responsible to monitor compliance with the ATIPP Act and HIPMA and has reminded public bodies and custodians that both pieces of legislation remain in effect throughout the

COVID-19 public health emergency. That means that they must continue to protect the privacy of Yukoners and process ATI requests as required by both laws.

The IPC recognizes that a number of public bodies and custodians are facing significant challenges delivering services as a result of implementing the COVID-19 measures. For businesses that were forced to close, they may not be in a position to provide services at all. These circumstances make it challenging for these public bodies and custodians to facilitate compliance with these laws. The IPC has, therefore, offered guidance to assist them in meeting their obligations, taking into account the current environment and the fact that these laws were not designed to allow for the rules to be relaxed during an emergency. These guidance documents are outlined below.

### **Privacy rights**

In order to support public bodies and custodians in meeting their privacy obligations under the ATIPP Act and HIPMA, and in recognition that there are risks to privacy associated with employees working from home and with business closures, the IPC issued a number of guidance documents and information sheets. These include:

- [guidance](#) to assist public bodies and custodians in understanding their authority to disclose personal information and personal health information during an emergency;
- [guidance](#) to ensure that employees of public bodies and custodians who are working from home properly secure personal information and personal health information; and
- [information](#) on the risks to privacy associated with the use of unsecure video and chat applications when used to conduct business involving the exchange of personal information and personal health information.

### **Access to information rights under the ATIPP Act**

Subject to limited and specific exceptions, the ATIPP Act provides the public with the right to access all recorded information that is in the custody or control of a public body.

The ATIPP Act requires the records manager<sup>1</sup> to respond to an ATI request within a specified time frame of its receipt. There is no authority for the records manager to extend the time to respond when the ability to respond in time is impacted by an emergency. Nor does the IPC have authority under the ATIPP Act to extend the time to respond to an ATI request.

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<sup>1</sup> The 'records manager' has specific obligations under the ATIPP Act, including to receive ATI requests on behalf of all public bodies and to work with public bodies to respond to the ATI request within a specified time frame. The records manager is a position that is located within the ATIPP Office at the Yukon government.

If the records manager fails to respond in time, the ATIPP Act deems the ATI request refused, which triggers an applicant's right to have the refusal reviewed by the IPC.

To address the reality that some public bodies may not be able to meet the timelines for responding to an ATI request because their ability to do so is impacted by implementation of the COVID-19 measures, the IPC worked with the ATIPP Office to develop some guidance for public bodies. These are as follows:

- The ATIPP Office, which receives ATI requests on behalf of all public bodies, may request an applicant delay making an ATI request that is not urgent because a public body may not be able to meet the timelines.
- If a public body's access to information program is significantly compromised due to implementing the COVID-19 measures, the public body will prioritize requests and process those that are 'urgent' first. Criteria was developed to guide decision-making about what constitutes an urgent request.
- If a public body is unable to meet the legislated timelines to respond to the ATI request, it must provide the ATIPP Office with the reasons, in writing. The reasons must support that it cannot meet the timelines because of the COVID-19 measures implemented.
- Where timelines cannot be met, the ATIPP Office and the public body will keep the applicant informed about the reason for the delay and will provide them with information about when to expect a response.
- Applicants will be informed that if the time to respond to the ATI request expires, they can make a complaint to the IPC.

In addition to the foregoing, the ATIPP Office has agreed to keep the IPC apprised of issues associated with access to information programs operated by public bodies and any initiatives it takes related to access to information.

### **Access to information rights under HIPMA**

Under HIPMA, individuals have the right to access their own personal health information that is in the custody or control of a custodian.

HIPMA requires custodians to respond to an ATI request within a specified time frame of its receipt. A custodian may not have authority to extend the timeline to respond as a result of implementing the COVID-19 measures. Nor does the IPC have authority under HIPMA to extend a custodian's time to respond to an ATI request.

Custodians, whose businesses have been impacted as a result of implementing the COVID-19 measures, have been informed of the following.

- They must continue to process ATI requests and must try to do so within the timelines set out in HIPMA for providing a response.
- Those that cannot meet the timelines must work with applicants to determine reasonable time frames for providing a response.
- Where the timelines will not be met, custodians have been advised to inform applicants about their right to make a complaint to the IPC.

Custodians whose businesses are closed as a result of implementing the COVID-19 measures have been advised to post signage at their places of business, informing individuals about who to contact if they want to request access to their personal health information and to include this same information on their websites and in voicemail messages.

All custodians whose service delivery is disrupted as a result of implementing the COVID-19 measures have been advised to establish a process to facilitate access to information. They were further advised to document any criteria used to prioritize ATI requests.

In addition, a request to correct personal health information in a record is also a time-driven process under HIPMA. The guidance provided to custodians about how to manage a correction request is the same as provided for ATI requests.

The guidance provided to custodians about how to manage their obligations during the COVID-19 health emergency can be found [here](#).

### **Complaints management by the IPC during COVID-19**

Any complaint received by the IPC about deemed refusals of ATI requests that are caused by time delays in providing a response to the applicant will be managed by the IPC as follows:

- An investigator with the Office of the IPC will work with the public body or custodian and the applicant to determine a reasonable timeline for providing a response, taking into account any limitations of the custodian or public body to provide a response due to implementation of the COVID-19 measures and the specific circumstances of the applicant.

The IPC can investigate any complaints about the application of any criteria used to prioritize ATI requests or requests for correction and about any matter associated with the management of these requests.

The IPC can also investigate any complaints about unauthorized collection, use, disclosure, security and management of personal information and personal health information.

### **More information**

Any questions about this information sheet can be directed to the Office of the IPC at 867-667-8468 or toll free in Yukon at 1-800-661-0408 (ext. 8468) or by email at [info@ombudsman.yk.ca](mailto:info@ombudsman.yk.ca).

In order to support efforts underway to implement physical distancing and for the protection of her staff and the public, the IPC is limiting personal contact by accepting complaints and enquiries by phone, email, fax or mail, rather than in person.

Email is not a secure form of communication, so emails should not include sensitive personal information. Telephone is the preferred method of communication at this time.

The purpose of this document is to inform the public about their rights under the ATIPPA Act and HIPMA and how to exercise those rights in light of COVID-19 measures.

This document is not intended as, nor is it a substitute for, legal advice. For the exact wording and interpretation of these laws, please read the laws in their entirety. This document is not binding on Yukon's Information and Privacy Commissioner.