
Summary Report: Consultation Results

**Proposed Amendments to the
*Access to Information and
Protection of Privacy Act***

June 2009

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Introduction

The *Access to Information and Protection of Privacy Act (ATIPP Act)* attempts to strike a balance between

1. accessing information held by public bodies; and
2. protecting the personal privacy of people whose information is held by public bodies.

New technology has changed how public records are managed and have enabled an increase in collection and sharing of information. Therefore, people are becoming more interested in the personal information government has about individuals, and how government protects this information. Public and media interest in the openness and accountability of government at all levels have raised the number of requests for government information. These circumstances require amendments to Yukon's *ATIPP Act* to ensure it continues to fulfill its purpose.

The Department of Highways and Public Works conducted a two month consultation, from October 15 until December 15, 2008, on proposed amendments to the *ATIPP Act* to update and improve the legislation. The purpose of the consultations was to gather input into proposed amendments to the *ATIPP Act*. The goal of the review is to change the existing legislation to improve access to information while simultaneously protecting personal information.

The Department of Highways and Public Works would like to express its sincere appreciation to all those individual Yukoners and members of various government organizations, stakeholders and businesses who took the time to review the materials and provide their views regarding the proposed amendments to the *ATIPP Act*.

Thank you for your participation.



Snapshot of Consultation Results

The Department of Highways and Public Works made consultation materials available to stakeholders and the public. The Information and Privacy Commissioner also provided additional information to the public during the consultation period, ensuring extra publicity and increasing people's awareness about the process and the opportunity to provide input if they wished. The media ran a few stories on ATIPP during and after the consultation, providing more publicity for the process as well.

Department staff are very pleased with Yukoners' responses to the consultations on what is sometimes viewed as a fairly technical piece of legislation. We received over 40 written submissions, and met with various groups, some Yukon government departments, and the Office of the Information and Privacy Commissioner over the two month consultation period.

The Department met with or heard from: 4 municipalities, 3 organizations representing school boards and councils, 9 Yukon government departments, 2 Yukon First Nations, 2 media representatives, several boards and committees, and most representatives of what is defined as the "broader public sector", which includes bodies such as Yukon College, Whitehorse General Hospital, Workers' Compensation Health and Safety Board, Yukon Energy and Yukon Development Corporations, Yukon Liquor Corporation and Yukon Lotteries Commission. Additionally, the Information and Privacy Commissioner provided a thorough submission on the proposed amendments, and a number of interested Yukoners made individual submissions.

All submissions provided valuable information to the Department. Some submissions commented on all the proposals; others only on some of the proposed changes. Some submissions also provided additional comments about other sections of the *ATIPP Act* that were not included in the consultation document. This feedback has provided the Department with a broad cross-section of opinion, creating a solid basis to review the proposed amendments and ensure that legislative changes reflect the views of Yukoners as we move forward to amend the Yukon's *ATIPP Act*.



The purpose of this summary report is to provide Yukoners with a summary of the comments that were received. The consultation results are broken down by issue and further divided into three sections: the problem, the proposal (proposed amendments), and summary of consultation results.

The results of the consultations will be reported to Cabinet. Once Cabinet direction is received, the next step will be to draft the legislation. After the legislation is drafted, the current plan is to introduce the amended *ATIPP Act* into the Legislature for debate in fall 2009.



Consultation Results

Issue: Definition of a Public Body/Scope of the Act (sections 2 and 3 of the current law)

Problem:

- It is often unclear what public bodies are covered by the *ATIPP Act*.
- Provincial/territorial legislation in other jurisdictions that deals with access to information and protection of privacy commonly applies to local governments, hospitals, and colleges and universities (known as the “MUSH” sector).
- Most legislation in other jurisdictions also includes many government boards and committees.

Proposal:

1. Add a clause to the *ATIPP Act* or to the Access to Information Regulation setting out criteria for identifying and including public bodies, and a schedule listing agencies that are deemed to be “public bodies”. This could include some boards and committees.
2. Amend the *ATIPP Act* to include institutions in the broader public sector that are not covered in the current legislation. This would include school boards or councils, Whitehorse General Hospital, municipalities and Yukon College, for example.

Summary of Consultation Results:

Scope of the Act

The Department received 25 written comments on the proposal to expand the scope of the Act, 16 submissions supported this concept and 9 did not.

Respondents supporting this concept explained their position with the following comments.

- Expressing the idea that organizations supported by public funds should be subject to ATIPP requirements.
- Noting that a balance between protection of personal information and access to information needs to be considered in the case of institutions that hold specialized information, for the purposes of managing costs and also to enable specialized research. This comment, made in more



than one submission, was specific to information held by one particular institution, but could apply to any one of the stakeholders identified as part of the "broader public sector".

- Stating that there would be more consistency and transparency in how organizations manage information disclosure and privacy protection if more of them were subject to the Act.

Respondents opposing this concept explained their position with the following comments.

- Stating they do not have enough information about what coverage under the Act would actually mean for their organization to support their inclusion under the legislation.
- Expressing concerns regarding capacity and human resource issues if their organization or institution had to take on this extra task, and questioning where additional resources would come from.
- Explaining that their institution or organization is quasi-judicial in nature, so certain rules respecting process already apply.
- Stating that a blanket decision that covers a large number of institutions cannot be supported, and suggesting criteria be established before additional organizations are brought under the Act.
- Providing information about the information and privacy policies their organizations are already operating under.

Clarifying the Definition of a Public Body

The Department received 26 written comments on the proposal to clarify the definition of a public body, 18 submissions supported this concept and 8 did not.

Respondents supporting this concept explained their position with the following comments.

- Stating that professional associations with a regulatory role should be covered.
- Explaining that, in their view, many bodies have custody of important personal information and it may be important that a person be able to gain access to files held by these bodies at some time.
- Noting that any public body that receives funding from government should be accessible and accountable for providing information under the *ATIPP Act*.



Respondents opposing this concept explained their position with the following comments.

- Stating that they did not have enough information to make an informed decision about how inclusion under the *ATIPP Act* would affect their organization, particularly with regards to the following: capacity, resource needs, continued independence from government in their operations, and the potential to be covered under other Yukon legislation that currently does not apply to their organization. This was a concern for both small and large organizations, and it was indicated that further meetings with department staff might be necessary to actually see what the draft wording of the legislation would look like in order to make an informed assessment about how potential inclusion would affect them.
- Noting that the Act is currently worded and structured so that it applies generally only to government departments, and that the process is quite complicated, which would present some difficulties for their organization. The suggestion is to try to simplify the processes in the Act and make these more in line with what some organizations already have in terms of policy and procedures, even though the organizations are not currently covered by the *ATIPP Act*.
- Stating that they do not feel they need to be covered under the legislation, as their particular organization is quasi-judicial in nature, so certain rules respecting process already apply.



**Issue: Stopping the Clock
(section 11 of the current law)**

Problem:

- Section 11 of the *ATIPP Act* establishes a time limit of 30 calendar days to provide a response, from the date the Records Manager receives a request for access to information.
- During the request process, there are instances when the applicant is asked to decide on issues that may require additional time such as further defining the scope of the request, or making final payment.
- Time may run out simply due to the length of time required for the applicant to review, consider, authorize, and return the Estimate of Costs.

Proposal:

Amend the *ATIPP Act* to state that all timelines are suspended once an Estimate of Costs or other decision request has been sent out to an applicant for their approval. This would "stop the clock" until the applicant's response is received by the ATIPP Office.

Summary of Consultation Results:

The Department received 25 written comments on stopping the clock; 22 submissions supported this concept and 3 opposed it. Most submissions on this proposal contained suggestions rather than just supporting or opposing the proposal.

Those who supported stopping the clock explained their position by noting that current timelines are often unrealistic to fulfill large or complex requests, and concurrent or related requests. It was also noted that the clock should not be stopped for other reasons, such as having the ATIPP coordinator in a Department determine the scope of the request.

Submissions opposing the proposal generally wanted to make sure that the process could not be suspended indefinitely. The suggestions ranged from allowing the applicant an extra 2 to 4 weeks (for example, up to an additional 30 working days) to respond to the ATIPP Office, and subsequently start the clock again. Also, there was a suggestion that a synopsis of available records might be provided to the applicant. This information could make it easier for the applicant to determine whether or not all the information initially requested was required. Another



suggestion was to use registered mail for all correspondence with the applicant, to ensure all parties are fully aware of the timelines.



**Issue: Visibility of Fee Waiver
(currently in regulations; not in the Act)**

Problem:

- The right to request that fees payable for access to information be waived is currently in the Regulations, rather than in the *ATIPP Act*.
- The person requesting the information must ask for the fee to be waived if they believe there is a good reason the information should be available free of charge.
- In other provincial legislation dealing with these matters, the right to ask for a fee waiver is written in the Act itself.

Proposal:

The proposal is to make the fee waiver provision more obvious by putting it in the *ATIPP Act* itself rather than in the Regulations.

Summary of Consultation Results:

The Department received 20 comments on the proposal to put the fee waiver provision in the Act rather than in the regulations; 17 submissions supported this concept and 3 did not. There were several comments explaining the positions expressed by the respondents.

One respondent opposed to the proposal noted that it did not really matter whether the fee waiver was included in the Act or in the regulations, but that public education and communications would help ensure people are aware of the fee waiver provisions. Other respondents supporting the idea of moving the fee waiver provision from the regulations to the Act also noted the importance of education and public information to ensure people are aware of their right to ask that fees be waived.

Another suggestion was that there be a minimum fee for any request and, that if the cost of a specific request was for less than that, the information be provided at no cost. For example, if the request results in only one page of information, it would cost more in administration to collect a small photocopying fee than the revenue collected. So, it would be more efficient to simply provide the information free of charge. On the other hand, with a large or complex request, a minimum fee should be set to allow departments to recover costs for time spent fulfilling the request.



It was also noted that the current fee structure is quite outdated, much lower than in most other jurisdictions, and that it should be updated to reflect current costs and current technologies (some of the newer media used to store information today are not mentioned in the current regulations). One submission noted that the reasons for waiving a fee should be expanded to cover any requests made in relation to the public interest, including the environment, or public health and safety.

Some organizations not currently covered by the Act were concerned that waiving fees would result in extra costs to them, and suggested the Act needed to be clear regarding whether and how they could administer their own fee structure.



Issue: Reviews and Inquiries
 (section 52 of the current Act)

Problem:

Section 52 of the *ATIPP Act* has been interpreted to mean that the Information and Privacy Commissioner must conduct a full inquiry on every request for review if mediation fails.

Proposal:

Revise the *ATIPP Act* to allow the Information and Privacy Commissioner to refuse to review requests that involve straightforward issues already addressed in a public body's response. This amendment would be written so that the Information and Privacy Commissioner would be able to decide whether or not a full inquiry is needed.

Summary of Consultation Results:

There were 24 responses to this issue. All supported the idea of allowing the Information and Privacy Commissioner to determine whether or not a full inquiry was needed. However, there were additional comments that identified some qualifiers around this support. A few respondents noted that the Information and Privacy Commissioner should be required to provide a written explanation to the applicant and to the ATIPP coordinator in a Department, outlining the reasons for the decision not to hold an inquiry. This suggestion is based on the desire to maintain a perception of fair and impartial decision making.



Issue: Information and Privacy Commissioner Mediation Processes (section 48 of the current Act)

Problem:

- A review conducted under section 48 of the *ATIPP Act* must be completed within 90 days.
- This timeline includes all of the time devoted to mediation prior to the inquiry process getting underway.
- This means that, in many cases, the time allowed for the inquiry is severely limited due to unsuccessful attempts at mediation.
- There may also be perceptions of conflict of interest in having the Information and Privacy Commissioner's Office conducting mediation.

Proposal:

Amend the Act to remove any perception of conflict by allowing mediation by an outside body.

Summary of Consultation Results:

The Department received 21 responses on this proposal. Response was mixed; 14 submissions supported the idea of mediation by an outside body and 7 opposed it.

Those who supported mediation by an outside body had additional comments mainly focused on the need to ensure there are competent, unbiased people available to do this work, and that there were timelines attached to the mediation process.

Those who opposed this proposal based their opposition on the idea that the Information and Privacy Commissioner's office is equipped and trained to do this work. They were concerned that outside mediation might be difficult if knowledgeable people could not be found to do this work, and that it would cost more to use outside people rather than staff in the Information and Privacy Commissioner's Office. Additionally, some respondents thought there should be some thought given to specifying a timeline for mediation to avoid running the clock down on the 90 days.



**Issue: Repetitive Requests
(section 43 of the current Act)**

Problem:

- Section 43 of the *ATIPP Act* allows the Information and Privacy Commissioner, upon the request of a public body, to authorize the public body to disregard access to information requests based on their *repetitive and systematic nature*.
- The Alberta *Freedom of Information and Protection of Privacy Act* allows the Commissioner to authorize a public body to ignore requests that are “frivolous and vexatious”.

Proposal:

Amend the *ATIPP Act* to specify more request categories and circumstances under which a public body may ask the Information and Privacy Commissioner to authorize the public body to ignore requests that are “frivolous, vexatious, and repetitive”.

Summary of Consultation Results:

The Department received 23 responses on the proposal; 19 agreed that there should be an amendment to allow the public body to ignore ‘frivolous, repetitious, and vexatious requests’ and 4 did not.

Among those that supported the proposal, several provided additional comments. One noted that a decision to ignore a request should be communicated to the applicant in writing, with clearly stated reasons.

Several respondents thought that the applicant should be able to appeal the decision to the Information and Privacy Commissioner. Another response noted that there should be more clarification around the whole application and appeal process, clarifying sections 32, 38, and 43, and suggested that a plain language summary of the Act should be available to help people navigate through the process. One response suggested amending section 6, which deals with how to make an ATIPP request, rather than section 43. Another response stated the need for a balance between frivolous requests and recognition that multiple requests might be legitimate. A couple of submissions wanted a better definition of what was meant by “frivolous, vexatious, and repetitive”.



**Issue: Multiple Concurrent Requests
(not in the current Act)**

Problem:

- It is becoming common for the ATIPP Office to receive several requests from a single applicant at the same time.
- Other jurisdictions have provisions stating that, when multiple requests are received at the same time from one requester, there is either an automatic extension of the response timeline or a public body can apply for an extension to the Information and Privacy Commissioner.

Proposal:

Revise the Act to state that there is an automatic extension of the response timeline when multiple requests are received at the same time.

Summary of Consultation Results:

The Department received 23 comments on this proposal; 18 submissions supported the idea of an automatic extension of time when multiple concurrent requests were received and 5 did not.

Those opposed had concerns in that they thought the proposal was ambiguous. For example, the proposal did not state the timeline of the extension, or how many requests would be required to trigger an extension. In addition, it wasn't clear if this meant multiple requests to one department or multiple requests to more than one department. One comment suggested that section 12 (which deals with extending time limits for responses to ATIPP requests) be amended, so the Records Manager can consider this situation as it arises, and the decision to extend the timeline be reviewed by the Information and Privacy Commissioner under section 48. One respondent thought multiple requests would be better handled if department ATIPP Coordinators had more training, and if files were properly maintained in departments. A few respondents thought there should be a specific time attached to the extension to avoid long delays – 30 days was suggested.



**Issue: Regular Review of the Legislation
(not in the current Act)**

Problem:

- Some Canadian jurisdictions, including Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Alberta, and B.C., have a clause in their access to information and protection of privacy legislation that requires regular reviews of the law.
- The Yukon's ATIPP legislation does not have this type of clause.
- Lack of a regular review can result in the legislation becoming outdated.

Proposal:

Add a new clause requiring regular review of the Act.

Summary of Consultation Results:

The Department received 28 responses to the proposal of including a clause to require regular review of the Act; 26 submissions supported this concept and 2 did not.

Support was based on different reasons such as ensuring Yukon legislation be amended to maintain the same standard as other Canadian jurisdictions. Other responses noted regular review should provide an opportunity for Yukoners and stakeholders, such as Yukon First Nations, to be a party to the process and provide meaningful input into the legislation. One submission suggested a review should take place every 3 to 5 years, and should include a report with recommendations for amendment to be tabled in the Legislative Assembly. A couple of submissions noted that technological changes make regular review especially important, particularly in terms of privacy protection.

The two submissions opposing this proposal stated that the Department could do an internal review as a matter of policy, and that reviews should only be conducted when there are complaints about the existing law.



Other Items

Many of the submissions made suggestions for changes other than the ones identified in the consultation document. Those suggestions will be provided to Cabinet for information purposes. If Cabinet wishes to consider some of these additional matters for amendment at this time, they will be added. If not, then they will be kept on a list to be considered when the Act is reviewed again in the future.



For additional information or questions regarding this report, contact the Manager for Corporate Information Management (referred to as the Records Manager in the *ATIP Act*).

Judy Pelchat
Manager, Corporate Information Management
(867) 667-8211
judy.pelchat@gov.yk.ca

