

## Municipalities FAQ's

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**The Access to Information and Protection of Privacy Act (ATIPPA)** aims to strike a balance between the Government of Newfoundland and Labrador's obligation to protect an individual's personal information in its custody and the public's right to know the operations of Government.

The **ATIPPA** applies to government departments and agencies, health boards, school boards, public post-secondary institutions and municipalities. The privacy provisions of the **ATIPPA** were proclaimed on January 16, 2008.

The following frequently asked questions and answers are intended to guide Municipalities and municipal employees in managing requests under the **ATIPPA**. They are not intended to take the place of legal advice and are subject to contrary interpretation by the Information and Privacy Commissioner and/or the Court.

Always consult your solicitor for legal advice and guidance.

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### 1. What is a "local government body" under the **ATIPPA**?

The **ATIPPA** defines a local government body in section 2(j). The definition includes a municipality as defined in the **Municipalities Act**, the City of Corner Brook, the City of Mount Pearl and the City of St. John's. It also includes any body designated as a local government body in the ATIPP Regulations.

Section 2(k)(iii) of the **Act** defines a "local public body" as "local government body", therefore either term could be used to refer to a municipality.

### 2. What records of municipalities are subject to the **ATIPPA**?

All records that are in the custody or under the control of the municipality are subject to the **ATIPPA** [section 5(1)] unless a specific exclusion applies.

A municipality has custody of a record when the record is in the possession of the municipality.

A record is under the control of a municipality when it has the authority to manage the record, including restricting, regulating and administering its use, disclosure and disposition.

### 3. How long should a municipality keep its paper/electronic records?

Section 37 states that where a public body uses an individual's personal information to make a decision that directly affects the individual, the public body shall retain that information for at least one year so that the individual has a reasonable opportunity to obtain access to it.

Otherwise, section 5(2)(b) of the **ATIPPA** allows the destruction of records in accordance with your records retention regulation or resolution.

#### 4. Who is an “employee” under the *ATIPPA*?

Section 2(e) of the *ATIPPA Act* defines “employee” as follows:

*“employee” in relation to a public body includes a person retained under a contract to perform services for the public body;*

In addition to those in an employment relationship with a public body, this could include volunteers, students on work experience arrangements, consultants, board members or any third party as long as a public body has entered into a contractual agreement. For certainty, any public body wishing to ensure that the *ATIPPA* applies to a particular situation should consider entering a Privacy Agreement that is available through the ATIPP Office. Such agreements should be reviewed by the solicitor for the public body.

#### 5. Are records of contractors subject to the *ATIPPA*?

The definition of “employee” in section 2(e) of the *ATIPPA* includes a person retained under contract to perform services for the public body.

Often municipalities have contracts with an organization to provide some kind of service to individuals. Services such as assessments and water utilities may be provided through contracts. The contractor is functioning in the place of the municipality therefore any records the contractor creates are subject to the same privacy and access rules as records of the municipality.

A record may be under the control of a municipality where a contract permits the municipality to inspect, review or copy records produced, received or acquired by a contractor.

As a result, contracts need to include privacy protection clauses, clarity on control of an access to records as well as records retention and destruction clauses.

#### 6. Who is responsible for administering the *ATIPPA Act* within a municipality?

The *Act* places the onus on the “head” of the public body to administer the provisions of the *Act*. In the case of a municipality, section 66 states that a local public body must designate a head through by-law, resolution or other legal instrument.

While the head of the public body will be accountable under the *Act*, section 67 allows delegation of the responsibilities by the head of a public body to a person on the staff.

### Council Records

#### 7. How should municipalities handle letters from residents that become part of council agenda packages, which are forwarded to council members?

Letters from residents normally include personal information, such as name, address, phone numbers, and other information such as details about the health of family members. Under section 213 of the *Municipalities Act*, meetings of a council must be conducted in public, except where it is held as a privileged meeting. Under sections 24 and 213 of the *Municipalities Act*, the public has a right to be present at council meetings that are conducted in public.

If it is the practice of the municipality to hold public meetings, then notice of this practice should be made available to the public. For example, notice may be placed in a brochure and on the municipality's web site, or in publications that residents may refer to when looking up contact information for council members.

When it is not clear that the author expected the information to be made public, the municipality should contact the individual and confirm that it was their intention that the information be disclosed to the public. Where possible, a severed record or summary of the information inquiry or complaint could be prepared for use at the council meeting.

Where the disclosure of such a letter would clearly be an unauthorized disclosure of the author's personal information but the personal information is needed by councilors to fully inform their decision-making, the matter could be discussed in a portion of the meeting that is closed to the public (e.g. a 'privileged' meeting). In that case, the letter would not be attached to or distributed as part of the agenda package.

**8. How should additional sets of Council records, such as agendas, supporting documents and minutes retained by Council members be treated?**

All records of Council may become the subject of an ATIPP request regardless of where the records are located. The **ATIPPA** states in section 37 that where a public body has used a person's personal information to make a decision that directly affects the individual then that information should be retained for at least one year. Otherwise, municipalities should consult with departmental records management polices to determine the proper retention and disposition of the records.

**9. Can municipal councils continue to meet in the absence of the public?**

It is possible for a meeting to be held in absence of the public. Section 213(1) of the **Municipalities Act** states that:

*"a meeting of a council shall be open to the public unless it is held as a privileged meeting or declared by vote of the councilors present at the meeting to be a privileged meeting."*

There is no requirement to take notes or minutes during privileged meetings. If notes have been prepared, they may be requested as part of an ATIPP request. Section 19 of the **ATIPPA** provides the municipality with the discretion to refuse to disclose these notes in certain circumstances. The Council minutes should show that a motion was made to hold a privileged meeting and then another to return to the open meeting so that section 19 may be applied.

## **Employee and Councilor Information**

**10. If a municipality receives an ATIPP request for the salaries of all employees and councilors, does the information have to be released?**

Under section 30(2)(f) of the **ATIPPA** an individual's position, functions or remuneration as an employee of a public body must be released if the request is made in accordance with the **ATIPPA**.

**11. Can the municipality disclose personal information of employees, such as salary, benefits or home address to council members?**

The personal information of employees can be disclosed to a council member only if the information is necessary for the performance of the duties of the council member. This is found in section 39(1)(f) of the **ATIPPA**. In addition, section 39(2) requires that only the information that the council member needs to know can be disclosed.

**12. Can a municipality verify an employee's salary to a lending institution or finance company where the employee has applied for credit?**

Financial information of an employee is the employee's personal information. Therefore, section 39 of the **ATIPPA** requires that consent from the employee is obtained before it can be disclosed. Where possible, consent should be in writing.

**13. Can a municipality disclose and/or verify the employment status and home address of an employee to a collection agency?**

A municipality can only confirm whether an individual is employed. The disclosure of a home address, without consent, would be an unauthorized disclosure of personal information.

**14. If a municipality receives an ATIPP request for a travel expense claim of an employee or councilor, does the information have to be released?**

Under section 30(2)(j) of the **ATIPPA** information about expenses incurred while traveling at the expense of the municipality is not considered personal information and must be released.

## **Fees**

**15. Can municipalities charge fees for handling ATIPP requests?**

Section 68 of the **ATIPPA**, and the Fee Schedules set out when fees may be charged for processing ATIPP requests. The Fee Schedules are set by the Minister of Justice.

See Appendix 5 and section 3.22 of the [Access to Information Policy and Procedures Manual](#) for additional information on the Fee Schedule.

**16. What fees can be charged for handling a request for information, other than a request for an individual's own personal information?**

Section 1(2) of the Fee Schedule states that a person seeking access to their own personal information only pays the \$5.00 application fee. They are not subject to any other fees.

The Fee Schedule is contained in Appendix 5 of the [Access to Information Policy and Procedures Manual](#). A person may apply to have the \$5.00 application fee waived if it would be reasonable and fair in the circumstances [section 4(1)(b) of the Access to Information Regulations].

**17. What fees can be charged for handling a request for information, other than a request for an individual's own personal information?**

Applicants are required to pay an initial application fee of \$5.00.

Municipalities can charge the time it takes to process a request. Some examples include charging the time to locate, retrieve and manually produce a record; to produce a record from information in electronic form; shipping costs; copying costs; and reproduction costs using non-conventional equipment.

Section 4(1)(b) of the **ATIPP Regulations** allows an applicant to request that the fees be waived if the applicant cannot afford payment. These requests should be considered on a case-by-case basis.

**18. Should municipalities follow the ATIPP fee schedule when releasing records outside of the ATIPPA?**

The **ATIPPA** does not replace existing procedures for access to information or records and does not change the fees municipalities may be charging for these services. This is stated in section 5(2)(a) of the **ATIPPA**.

## **Assessment Roll Information**

**19. Can municipalities still collect the personal information they need for the property assessment roll?**

Section 32(a) of the **ATIPPA**, allows a municipality to collect personal information where it is authorized by another piece of legislation to do so.

Section 11 of the **Assessment Act** authorizes the Executive Director of the Municipal Assessment Agency to collect this information and section 21 of that Act requires the Municipal Assessment Agency to disclose that information to the clerk.

**20. Should municipalities still make the assessment roll available for inspection?**

The **ATIPPA** allows disclosure of personal information in section 39 where such disclosure has been authorized in another **Act**. Section 215 of the **Municipalities Act** and section 27 of the **Assessment Act** allow individuals to inspect the assessment roll during normal business hours.

**21. Can municipalities use the personal information on the assessment roll for other purposes related to the operation of the municipality?**

Under section 38(1) (a) of the **ATIPPA**, a municipality may use personal information for the purpose for which the information was collected or a consistent purpose. Consistent purpose is defined in section 40 of the **ATIPPA**.

When the personal information is collected directly from an individual, notice should be given about how their personal information may be used, as required by section 33(2) of the **ATIPPA**.

**22. Can a municipality sell the personal information on the assessment roll to external groups or companies, such as marketers?**

Information on an assessment roll is collected for the purposes of determining tax liability and/or for collecting a tax. Section 27(2) of the **ATIPPA** specifically applies to information collected for the purposes of collecting tax and states that the information must not be disclosed in response to an ATIPP request.

If a member of the public would like to see the rolls, they are available for inspection under section 215 of the **Municipalities Act** and section 27 of the **Assessment Act**.

In addition, it is not likely that selling the personal information on the assessment roll would be considered a consistent use for any information that has been collected.

**23. If a municipality is asked to provide the civic or mailing address of property owned or leased by an individual and that information is part of the assessment roll, can the address of the individual be disclosed? What if a municipality is given a list of civic addresses and is asked to provide the names and mailing addresses of property owners?**

The disclosure of the names and mailing addresses of property owners for these purposes would likely be an unauthorized disclosure of personal information under the **ATIPPA**.

In addition, section 27(2) of the **ATIPPA** specifically applies to information collected for the purposes of collecting tax and states that the information must not be disclosed in response to an ATIPP request.

However, if a member of the public would like to see the rolls, they are available for inspection under section 215 of the **Municipalities Act** and section 27 of the **Assessment Act**. Even though an individual may then be able to identify the names of owners, mailing addresses and legal description of the property, this would not be in violation of the **ATIPPA**.

If there is any requirement for notification of property owners under another statute or regulation of Newfoundland and Labrador or Canada (e.g. an environmental protection or energy statute or regulation), then section 39(1)(d) or 39(1)(r) of the **ATIPPA** would permit disclosure of the mailing address of the owner and/or legal description of the property.

**24. Can real estate agents and/or appraisers request legal land descriptions, parcel size/dimensions, assessment taxes, etc. on behalf of their clients when consent from the landowners is implied by virtue of the agent or appraiser working for their client?**

When the address of the landowner's property is provided, the disclosure of the property information only (i.e. legal land description, parcel size and dimension, assessment and taxes) by the municipality would not be an unauthorized disclosure. This is not personal information.

Personal information, however, should not be disclosed to a real estate agent or appraiser on the basis of implied consent. This information should only be disclosed with the written consent of the landowner.

## Planning Records

### 25. Can the records related to development applications and subdivision approvals be released to anybody upon request?

#### **Applications for Development Permits or Subdivision Approval:**

Application files may contain statements from provincial government departments, utility companies or other agencies to whom the application was referred; technical reports prepared by or for the applicant, including groundwater evaluation, soil suitability for private sewage disposal; specialty engineering or design reports and property appraisal reports. Therefore, records should be reviewed to determine whether any of the exceptions to disclosure in the **ATIPPA** apply and then all or part of the records would be released based on the application of the **Act**.

For example, some of this information may be harmful to the financial or economic interests of the municipality (section 24) or harmful to the business interests of a third party (section 27). Section 30(2)(k) states that any personal information that was submitted in support of the permit application should not be disclosed. In the absence of any exceptions, these records may be released.

#### **Minutes/Records of Proceedings:**

Under section 213 of the **Municipalities Act**, a municipality may deliberate and make decisions in meetings closed to the public. If hearings are held as privileged meetings, and if any notes of the proceedings are kept, they would not be routinely released.

If a municipality received an ATIPP request for access to the records of such meetings (if there were any), the head of a municipality might refuse to disclose information which could reveal the substance of deliberations at the privileged meetings (section 19 of **ATIPPA**) unless the subject-matter of the deliberations were considered in a public meeting.

If hearings are open to the public, records of the meetings or hearings could be released in accordance with any policies of the municipality.

### 26. Can a municipality disclose a copy of a development permit or a list of development permits issued?

The records requested should be reviewed to determine whether any of the exceptions to disclosure in the **ATIPPA** would apply and then all or part of the records would be released based upon the application of the **Act**.

For example, some of this information may be harmful to the financial or economic interests of the municipality that would be covered in section 24 of the **ATIPPA** or harmful to the business interests of a third party which is found in section 27.

If the permit has been issued to an individual, the municipality may release the name of the permit holder and the “nature of the permit”. This would likely include all the information related to what the permit allows the permit holder to do (e.g. location of work site, the kind of use, value of the project, etc.) Section 30(2)(k) of the **ATIPPA** states it may not include other personal information of the permit holder that was submitted in support of the application such as their home phone number, or home address if different than the location of the work site.

### 27. Can a municipality disclose a copy of a building permit or a list of building permits issued?

The records requested should be reviewed to determine whether any of the exceptions to disclosure in the **ATIPPA** would apply and then all or part of the records would be released based upon this review.

If the permit has been issued to an individual, a municipality may release the name of the permit holder and the “name of the Permit”. This would likely include all the information related to what the permit allows the permit holder to do (e.g. location of work site, the kind of structure, its size, value of the project, etc.). Section 30(2)(k) of the **ATIPPA** states it may not include other personal information of the permit holder that was submitted in support of the application such as their home phone number, or home address if different than the location of the work site.

## Other Questions

### 28. Can a municipality disclose the address of a person to a private investigator?

All requestors have the same status under the **ATIPPA** whether they are private investigators, companies collecting on overdue accounts, individuals collecting on a judgment, bailiffs seizing property, or process servers wishing to serve court orders, warrants or other documents on individuals. Therefore all requests will be treated the same and processed in accordance with the sections of the **ATIPPA**.

Section 27(2) of the **ATIPPA** states that the “head of a public body shall refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.”

A municipality, therefore, should not disclose addresses from the assessment roll. However, anyone may ask to inspect the assessment roll under section 215 of the **Municipalities Act** and may locate an address this way.

### 29. Can a municipality disclose information to a public health inspector?

Public health inspectors may ask for the name and contact information of a business license holder. Business license information, even if the business is owned by an individual, is not personal information and may be disclosed.

Public health inspectors may also ask for information on a property. Normally contact information may not be disclosed.

The inspector could ask to inspect the assessment roll, and in doing so may be able to identify the individual's mailing addresses and legal description of property. The **Municipalities Act** requires that municipalities provide access to the assessment roll during normal business hours. Being allowed to inspect the roll does not mean that a complete copy of the roll, containing names and contact information, can be disclosed by the municipality.

If the inspector is carrying out an investigation of a complaint, or other law enforcement activity under an enactment, the municipality may disclose the information under section 39(1)(n) of **ATIPPA**. The municipality may want to require the inspector to make the request for information in writing.

**Note:** the definition of law enforcement in section 2(1) includes any investigation, inspection or proceeding that could lead to a penalty or sanction.

**30. What information can a municipality release on a tax certificate?**

Under section 39(1)(r) of the **ATIPPA**, a municipality can disclose personal information that other legislation authorizes it to disclose. Section 136 of the **Municipalities Act** authorizes the release of a tax certificate to a property owner, mortgagee or his or her solicitor.

This certificate may contain the tax position of the property and any other charges imposed by the municipality on the property.

The **Municipalities Act** does not authorize the disclosure of this information to a person other than the owner, mortgagee or solicitor.

**31. Can a municipality disclose personal information to the Support Enforcement Program?**

Under section 39(1)(r) of the **ATIPPA**, a municipality can disclose personal information that other legislation authorizes it to disclose.

Section 11 of the **Support Orders Enforcement Act, 2006** authorizes the Director of Support Enforcement to collect specific information from a municipality.

Municipalities should only disclose the personal information necessary to the enforcement process relating to the order.

**32. Can a municipality disclose personal information to an auditor?**

Under section 39(1)(j) of the **ATIPPA**, a municipality can disclose personal information to the Auditor General or another person prescribed in the regulations for audit purposes.

**33. What information can a municipality disclose to the Department of Municipal and Provincial Affairs?**

Under section 39(1)(r) of the **ATIPPA**, a municipality can disclose personal information that other legislation authorizes it to disclose.

Section 4 of the **Municipal Affairs Act** authorizes all officers of the Department of Municipal and Provincial Affairs to access "...all books, records, papers, documents and other property ..." of a municipality.

**34. If a municipality receives an ATIPP request for the records of a complaint made about an individual, does the municipality have to release the name of the complainant?**

Under section 30(1) of the **ATIPPA**, a municipality must not disclose personal information, including an individual's name. Section 30(2) does not allow for disclosure of this information even though the circumstances may identify the complainant.

**35. If a municipality receives a complaint about an employee, would the municipality release the name of the complainant to the employee?**

Under section 30(1) of the *ATIPPA*, a municipality must not disclose personal information, including the name of an individual who has made a complaint. However, efforts to resolve the complaint may result in the identification of the complainant. For example, a supervisor cannot investigate a complaint against an employee without describing the complaint to the employee.

In such situations, the complainant should be advised that in order to resolve the situation, it might be necessary to disclose their name or other identifying information. This should be considered with section 39(2) of the *ATIPPA* that requires that the amount of personal information disclosed must be limited to the minimum amount necessary.

**36. Can a municipality disclose bidder's lists or lists of plan holders for municipal projects to contractors, construction companies, agencies or other persons on request?**

This information may be provided in accordance with the Public Tender Act. An ATIPP request for this information is not required.

**37. If a municipality receives an ATIPP request for copies of contracts with consultants, engineers or other contractors, can the municipality release the records?**

Copies of contracts can be disclosed after they have been awarded, on the premise that the public has the right to know who has been engaged to do work for the municipality and how much is being paid.

However, some information in the contract, or in supplementary documentation, must be withheld if it meets the three-part test in section 27 for harm to business interests of the contractor.

Information may also be withheld under section 24 if the local government body can show that its disclosure could reasonably harm its economic interests, result in financial loss or interfere with negotiations.

Examples of information that might be withheld include unit pricing, actual wages paid to employees of the contractor or proprietary information.

**38. Can the names of staff or clients be disclosed to the local police?**

When the police are investigating a particular incident or the possibility that a criminal offence has been committed, the disclosure of personal information of a staff member or a client is permitted under section 39 (1)(n) of the *ATIPPA*.