



Yukon
Information
and Privacy
Commissioner

3162 Third Avenue
Whitehorse, Yukon, Y1A 1G3
T: 867.667.8468
F: 867.667.8469
1.800.661.0408 ext. 8468
yukonipc.ca

Consultations under the *Access to Information and Protection of Privacy Act (ATIPPA)*

Guidance Document

The ATIPPA requires public bodies to respond to access requests within 30 business days. Under the Act, the Access and Privacy Officer (APO) may extend the time limit for responding when consultations are **necessary** to respond to an access request AND cannot be completed within the 30-business-day time limit, provided the extension is **reasonable** in the circumstances.

Provisions of the ATIPPA

- Section 62(2)(a)(v)(A) authorizes a public body to request an extension of time where it **reasonably requires** more time to...consult with another public body whose information has been identified as relevant to the access request and is held by the responsive public body.
- Section 62(2)(a)(v)(B) authorizes a public body to request an extension of time where it **reasonably requires** more time to...consult with a person, government or other entity (other than a public body) that the head reasonably believes is likely to be adversely affected by granting access to information identified as relevant to the access request.
- Section 62(2)(a)(v)(vi) authorizes a public body to request an extension of time where the head **reasonably requires** more time to seek the views of a third party whose information has been identified as relevant to the access request.

When consultation is reasonably required

- Public bodies *may* consult about responding to an access request but are *not obligated* to do so.
- The onus is on the public body to critically review the records at issue and apply all discretionary and mandatory provisions as appropriate. A public body may need to consult only where further clarification is needed.

- The purpose of the consultation is to supplement the public body's analysis and assessment of the record in order to make a decision about the applicant's right of access.
- The consultation process should not be used as a substitute for the public body's judgement about whether to grant access. The purpose of a consultation is not to obtain "consent" to release information to an applicant, but rather to assist a public body in making a decision where there is ambiguity about whether an ATIPPA provision applies.

In deciding to consult, public bodies should consider the following:

- Establish what provision(s) of the ATIPPA are potentially at issue in respect of the responsive record/information. Are they discretionary or mandatory?
- Establish why it is necessary to consult with the other party to decide about granting access to the record/information at issue.
- How the other party being consulted is expected to assist in making the decision:
 - What additional information the other party is expected to provide, and why will this information be helpful in making a decision?
- Where applicable, ensure you are able to clearly outline how disclosure of the record/information is reasonably expected to harm the public body, or third party being consulted (i.e.: *Merck Frosst Canada Ltd. v. Canada (Health)*).

When a consultation is not reasonably required

A consultation is not reasonably required when:

A public body has already decided whether to grant access to a record/information

- the public body has determined there is a clear right of access to the information because no exception to the right of access exists, or
- the public body has determined that there is an exception to the right of access and intends to refuse access to the information requested.

Submitting a time extension request to the APO

The public body should document its considerations and exercise of discretion in respect of the need to consult and provide the information to the APO for their consideration.

The APO must document its decision and rationale in respect of the time extension, including how it evaluated the information submitted by the public body.

We will request this information from the APO if we receive a complaint about the granting of a time extension under subsection 62(5) of the ATIPPA.

Additional resources

Our [Public Body Guidance on Time Extensions](#) provides additional information on when to consider a time extension request under the ATIPPA.

Disclaimer

The purpose of this document is to inform and support public bodies in meeting their obligations under the ATIPPA.

This document is not intended as, nor is it a substitute for, legal advice.

This document is not binding on the Yukon Information and Privacy Commissioner.