

DEC 02 2020

The Honourable David B. Orsborn  
Committee Chair  
Statutory Review 2020 - Access to Information and Protection of Privacy (ATIPP) Act  
3<sup>rd</sup> Floor, Beothuck Building, 20 Crosbie Place  
St. John's, NL A1B 3Y8

Dear Mr. Orsborn:

Thank you for the opportunity to submit for your consideration the following list of issues regarding the five-year review of the ATIPP Act as requested in your letter dated September 29, 2020. The Department of Finance has carefully reviewed the issues raised by the Terms of Reference and Schedule A of the ATIPP Act for provisions in legislation that prevail over the ATIPP Act in its response.

Mandate Issue: Public and public body experience in using and administering the ATIPPA, 2015 to access information in the custody or control of public bodies in Newfoundland and Labrador and opportunities for improvement

- Department Comment: Suggest changes to the wording of Section 19. (1) "Where the head of a public body intends to grant access to a record or part of a record that the head has reason to believe contains information that might be excepted from disclosure under section 39 or 40, the head shall make every reasonable effort to notify the third party." Wording assumes that the Department is able to judge what is harmful to business interests of any third party. It is suggested that the third party always be included and consulted on its information provided to government.
- Department Comment: Suggest, in view of section 13 of ATIPPA "duty to assist," that legislation reinforce due diligence on applicants to assist with the processing. Therefore, it is recommended that amendments to be made to the current legislation (i.e. when an applicant does not respond to a department's request for clarification within 30 days, that the Department be given the authority to abandon the request.) Refer to subsection 7.(4) of PEI's Freedom of Information act at: [https://www.princeedwardisland.ca/sites/default/files/legislation/f-15-01-freedom\\_of\\_information\\_and\\_protection\\_of\\_privacy\\_act.pdf](https://www.princeedwardisland.ca/sites/default/files/legislation/f-15-01-freedom_of_information_and_protection_of_privacy_act.pdf)

Mandate Issue: Public body response times for access requests and whether the current ATIPPA, 2015 requirements for response and administrative times are effective

- Department Comment: Suggest a review of subsection 2.(b) “business days” as it is noted that four of government’s days considered as holidays are not considered holidays for the purposes of the Interpretation Act and ATIPPA, 2015. Currently the following Government holidays are not recognized under the current legislation as holidays for processing:
  - St. Patrick’s Day
  - St. George’s Day
  - Discovery Day
  - Orangeman’s Day

Therefore, should a response be due on these days, either an ATIPP coordinator would have to (i) reduce processing time by one day (19) in order to avail of the above holidays, or (ii) work and not be given the same days off as the rest of government employees.

Mandate Issue: An examination of the request for extensions/disregards process to the Office of the Information and Privacy Commissioner

- Department Comment: Suggest revisions to section 23 of ATIPPA for the legislation to provide authority for public bodies to extend up to 10 business days without seeking permission from the OIPC. However, anything over 10 business days to be approved by the OIPC. Some requests are more complex than others to process and, with this authority, it would reduce the administrative burden that currently exists with the processing of requests for extensions of time to the OIPC.

Mandate Issue: Whether the current Cost Schedule set in accordance with subsection 25(6) of ATIPPA, 2015 is effective

- Department Comment: Suggest including a clearly defined listing in the legislation of what types of fees can be charged to an applicant. An example can be found in the Province of Alberta under the Schedule 2 of FOIP at: [https://www.qp.alberta.ca/documents/Regs/2008\\_186.pdf](https://www.qp.alberta.ca/documents/Regs/2008_186.pdf)

Review the list of provisions in Schedule A to determine the necessity for their continued inclusion in Schedule A – “Statistics Agency Act”

**Section 13 of the Statistics Agency Act**

Comments from Clyde K. Wells, Chapter 5 pages 167 of the Report of the 2014 Statutory Review of the Access to Information and Protection of Privacy Act volume ii | full report state:

“Clearly this is not wholly government information. Much of it may be the private information of the parties from which it is taken by force of law. It may be that such records can be adequately protected by the provisions of the ATIPPA. However, as totally private information it would seem appropriate for such records to be protected directly through provisions of the statute authorizing their collection and management.” <https://www.gov.nl.ca/atipp/files/ATIPPA-Review-Committee-Final-Report-2015.pdf>


It is noted that while some of the information would be protected under section 39.2 (tax information), the use of section 40 to protect personal info and 39.1 to protect business information requires a harms test to be met. While they are mandatory exemptions, the possibility exists that the information may not be fully protected from disclosure. In addition, section 35 may be applied to some business information, but it is a discretionary exemption and may not fully protect the information collected under section 13 of the Statistics Agency Act.

For further consideration, please see the enclosed supporting letter from the Economics and Statistics branch of the Department of Finance.

In conclusion, it is the opinion and recommendation of the Department of Finance that, as per section 7.(2) of ATIPPA, the **Statistics Agency Act** should continue to be a provision in Schedule A. Section 7.(2) states that “...where access to a record is prohibited or restricted by, or the right to access a record is provided in a provision designated in Schedule A, that provision shall prevail over this Act or a regulation made under it.”

Thank you in advance for your consideration.

Sincerely,



The Honourable Siobhan Coady  
Deputy Premier  
Minister of Finance  
MHA for St. John's West



Government of Newfoundland and Labrador  
Department of Finance  
Economic, Fiscal and Statistics Branch

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Access to Information and Protection of Privacy Act Statutory Review 2020  
The Honourable David B. Orsborn  
Committee Chair

Dear Mr. Orsborn:

I am writing to provide additional information on the justification for maintaining the *Statistics Agency Act* (the *Act*) (s.13) exemption under Schedule I of the *Access to Information and Protection of Privacy Act* (ATIPPA).

The Newfoundland and Labrador Statistics Agency (NLSA) operates under the authority of the *Act* but also uses ATIPPA on a daily basis. ATIPPA applies to most of the daily business and functions of the Agency; the *Act*, however, applies to a range of very specific functions of NLSA undertaken on behalf of Government.

Specifically, the *Act* provides the authority to collect confidential, individual record level data directly and indirectly from persons, businesses or other groups for statistical purposes; such data cannot be used for any form of administrative purpose. The *Act* ensures information collected is without influence, unobstructed and provided truthfully and requires that this information be protected from disclosure as to ensure the integrity of the statistical system. This is critical for policy research, monitoring and development and the evaluation of legislations, programs and services provided to the public and businesses.

The *Act* is also designed, and is an absolute requirement to enable the transfer of confidential data between NLSA and Statistics Canada (STC). STC is responsible for the National Statistics System which comprises Statistics Canada, the Provinces and Territories. STC is also responsible on behalf of Canada for compliance to international statistical reporting requirements and standards. Newfoundland and Labrador is a member of the National Statistics System and has a very similar mandate and legislation as Statistics Canada. The Federal Statistics Act has the same exceptions under the Federal Access to information Act and Privacy Act. Under the Access to Information Act, there is a mandatory exemption to the disclosure of information

collected under the Statistics Act. In regards to the Privacy Act, the disclosure of personal information is subject to Acts of Parliament that may prohibit the disclosure. This legal framework is the cornerstone of Canadian trust in the statistical system.

NLSA consulted with STC about potential impacts should the *Act* not be exempt from the ATIPPA legislation. STC has also offered to speak directly with the Committee Chair to discuss the role of the National Statistics System and Access to Information legislations. The comments below highlight some key implications of removing the exemption:

- In order to meet its mandate, the NLSA must have access to a vast array of information on persons, business and organizations, and in many instances, requests for information made under the *Act* are made on a mandatory basis.
- The powers given to the NLSA to access confidential information must be accompanied by an equally strong confidential provision to protect individually identifiable information (that is, information that could be linked back to a person, business or organization, whether or not direct identifiers remain attached to the record).
- The information obtained under the *Act* is meant to be used solely to meet the Agency's mandate, which is exclusively of a statistical nature; as such, access to confidential information obtained under the *Act* cannot be used for administrative or other purposes.
- Currently, survey respondents should have no fear of providing accurate information, as no one other than persons who have taken the oath under the *Act* can view their information.
- Should the NLSA also conduct surveys on a voluntary basis, having a strong confidentiality provision would reassure respondents and increase participation rates.
- Should the confidentiality protections of the *Act* be diminished in any way, it will be more difficult for the NLSA to obtain confidential information, and thus meet its mandate. For example, Statistics Canada currently shares confidential information on the basis that the *Act* offers the same level of confidentiality protection as the federal *Statistics Act*. Should it no longer be the case, the agreement enabling that sharing would have to be terminated, as it would no longer meet the requirement of the federal *Statistics Act* (sections 11 and 12).

While there are many implications not mentioned, the essence of the situation is that should the full protection of data held under the *Act* be removed, NLSA would no longer be able to function fully as a member of the National Statistics System. It would not be able to access many types of data from STC and as a result many essential activities of Government would be jeopardized or eliminated (one example would be the loss of data essential for the preparation of Government

economic forecasts and impact analysis). It would also eliminate our Government's ability to work with other jurisdictions where the *Act* is routinely required to allow for the collection of and access to key data routinely required as inputs to Government decision-making.

As well, emphasis is growing internationally on the importance of the unique role statistics agencies play in government and their independence to ensure accurate and unbiased information for evidence based, transparent and accountable decision making. The OECD Council on Good Statistical Practice states "statistics are an indispensable tool for good analysis, transparency, accountability and ultimately for informed decision-making and the functioning of democracies." Nationally, there is alignment of these as the federal government committed in the amendments to the Statistics Act in 2017, to legislate the independence of the Chief Statistician. Ensuring that information provided to the Agency cannot be further disclosed, even under the ATIPPA, it provides for an Agency that produces statistics that are neutral, objective, accurate and reliable will ensuring that the public continue to have confidence in the integrity of their national and provincial statistical offices and in the data they produce.

It is therefore recommended that the exemption afforded in the *Access to Information and Protection of Privacy Act* to prohibit the disclosure of information collected under the authority of the *Statistics Agency Act (s.13)* remain to preserve the integrity of the statistical system.

Sincerely,



**ROBERT REID**  
**DIRECTOR, NEWFOUNDLAND AND LABRADOR STATISTICS AGENCY**