

March 17, 2017

*note to Betty
Mays, 2017*

Bern,

Re: Duty to Document

The OCIO advised that a presentation was provided to Ministers Bennett and Coady in August/September 2016 timeframe.

Julie Moore suggested that Ellen provide a presentation to you at your convenience.

Draft documents attached:

- OCIO - Jurisdictional scan, circa 2015
- OCIO - Proposed legislative language to accommodate Duty to Document
- OCIO - Draft Guideline – Implementing the Requirement to Create Government Records
- OCIO - Draft Directive – Creation of Government Records

Also attached is an excerpt from ATIPP Review document (Executive Summary) regarding Information Management and a copy of the GNL Implementation Table for ATIPP Act recommendations. #79

Please advise how you would like to proceed.

Thanks.

-Nina

Jurisdictional Scan

The following jurisdictional scan has been completed. As indicated in the chart below, the OCIO has been unable to identify a Canadian jurisdiction where the duty to document has been included in legislation. There have been other countries that have included it however not using the "duty to document" terminology.

Jurisdiction	Reference	Findings
Canadian Provinces/Territories		
Government of Canada	<i>Library and Archives Canada Act</i>	No Duty to Document
	<i>Financial Administration Act</i>	Specifies the requirements to keep financial records
	Access to Information Act	Proposals have been made to amend this legislation but there has been no specific duty to document section included to date.
British Columbia	<u>The <i>Document Disposal Act</i></u>	Discusses requirements for documenting the disposal of records and information. Does not include duty to document. There is new legislation that has passed the first reading the <i>Government information Act</i> which will replace the document disposal act. The proposed legislation removes penalty for violation.
	<u><i>Government Information Act</i></u>	This legislation is on its first reading. It does not specify Duty to Document. Responsibility of head of government body section 17.1 "The head of a government body is responsible for ensuring that an appropriate system is in place within the government body for managing and securing government information."
Alberta	<u><i>Government Organization Act</i></u>	The Lieutenant Governor in Council may make regulations (a) respecting the management of records in the custody or under the control of a department, including their creation, handling, control, organization, retention, maintenance, security, preservation, disposition, alienation, destruction and their transfer to the Provincial Archives of Alberta
	<u>Government Records Regulation</u>	Section 4.1 The Minister is responsible for establishing a records management program.

Jurisdiction	Reference	Findings
		Section 4.2 For the purpose of providing the details for the operation of the records management program, the Minister may establish, maintain and promote policies, standards and procedures for the creation, handling, control, organization, retention, maintenance, security, preservation, disposition, alienation and destruction of records in the custody or under the control of departments and for their transfer to the Provincial Archives of Alberta.
Saskatchewan	<u>Archives Act</u>	<u>No</u> Duty to document
Manitoba	<u>The Archives and Recordkeeping Act</u>	No duty to document
Ontario	<u>Archives and Recordkeeping Act</u>	<u>No</u> Duty to document
Quebec	<u>AN ACT RESPECTING ACCESS TO DOCUMENTS HELD BY PUBLIC BODIES AND THE PROTECTION OF PERSONAL INFORMATION</u>	No Duty to document
New Brunswick	<u>Archives Act</u>	No duty to document
Nova Scotia	<u>http://www.ednet.ns.ca/foipop.shtml</u>	<u>No</u> Duty to document
Prince Edward Island	<u>Archives and Records Act</u>	<u>No</u> Duty to document
Yukon	<u>http://www.gov.yk.ca/legislation/legislation/page_a.html</u>	<u>No</u> Duty to document
Nunavit	<u>Access to Information and Protection of Privacy Act</u>	<u>No</u> Duty to document
North West Territories	<u>Archives Act</u>	<u>No</u> Duty to document

Jurisdiction	Reference	Findings
	<p><u>ATIPP Act</u></p>	<p>Section 7 of this act is title <i>Duty to Assist Applicant</i>. Sub-section 2 is titled <i>Duty to Create Document</i> but this is in the context of assisting the applicant:</p> <p>7. (1) The head of a public body shall make every reasonable effort to assist an applicant and to respond to an applicant openly, accurately, completely and without delay.</p> <p>(2) The head of a public body shall create a record for an applicant where</p> <p>(a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and (b) creating the record would not unreasonably interfere with the operations of the public body.</p>
<p>Other Countries</p>		
<p>Australia: New South Wales Government</p>	<p><u>State Records Act</u></p>	<p>Establishes records management obligations in section 2:</p> <p>(1) Each public office must make and keep full and accurate records of the activities of the office.</p> <p>(2) Each public office must establish and maintain a records management program for the public office in conformity with standards and codes of best practice from time to time approved under section 13.</p> <p>(3) The Authority may permit such departures from the requirements of the standards and codes as it considers necessary or desirable to accommodate the particular needs of a public office or class of public offices.</p> <p>(4) Each public office must make arrangements with the Authority for the monitoring by the Authority of the public office's records management program and must report to the Authority, in accordance with arrangements made with the Authority, on the implementation of the public office's records management program.</p>

Jurisdiction	Reference	Findings
New Zealand	<u>Public Records Act 2005</u>	<p>Establishes requirement to create and maintain records in section 17:</p> <p>(1) Every public office and local authority must create and maintain full and accurate records of its affairs, in accordance with normal, prudent business practice, including the records of any matter that is contracted out to an independent contractor.</p> <p>(2) Every public office must maintain in an accessible form, so as to be able to be used for subsequent reference, all public records that are in its control, until their disposal is authorised by or under this Act or required by or under another Act.</p> <p>(3) Every local authority must maintain in an accessible form, so as to be able to be used for subsequent reference, all protected records that are in its control, until their disposal is authorised by or under this Act.</p>
United Kingdom	<u>Public Records Act</u>	Does not specify Duty to Document
United States	U.S. C 44	<p>§ 3101. Records management by agency heads; general duties</p> <p>The head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.</p>

proposed only

Proposed Legislative Language to accommodate Duty to Document – Management of Information Act

Section	Existing Legislation	Proposed Legislation
Section 2. Definitions	N/A	<p>Add OIPC Definition:</p> <p><i>Information and Privacy Commissioner Means the Information and Privacy Commissioner appointed by the Lieutenant-Governor in Council on a resolution of the House of Assembly.</i></p>
Section 4. Duty to Document	N/A	<p>Add Duty to Document and Monitoring/Audit Requirements:</p> <p><i>4 (1) Every public body shall create such government records as are reasonably necessary to document the conduct of its affairs.</i></p> <p><i>4 (2) Implementation and operation of Section 4(1) is subject to monitoring or audit and report to the House of Assembly by the Office of the Information and Privacy Commissioner.</i></p>
Section 8. Offences	<p>(1) A person who unlawfully damages, mutilates or destroys a government record or removes or withholds a government record from the possession of a public body or otherwise violates this Act is guilty of an offence and is liable on summary conviction to a fine of not less than \$1,000 and not more than \$50,000 and in default of payment to imprisonment for a term of not less than 3 months and not more than 18 months or to both a fine and imprisonment.</p> <p>(2) In addition to a penalty imposed under subsection (1) a judge may make an order that the record that is the subject of an offence be returned to the possession of the public body.</p>	<p>Add Offence for the failure to Comply with the Duty to Document:</p> <p><i>8 (1) A person who wilfully fails or refuses to create a record as required under this Act may be subject to discipline as directed by the head.</i></p> <p>The current 8(1) and 8(2) will become 8(2) and 8(3) respectively.</p>

this approach has not been approved.

SAS Paine



Government of Newfoundland and Labrador
Office of the Chief Information Officer
Information Management Branch

DIRECTIVE – CREATION OF GOVERNMENT RECORDS

Directive (Definition): OCIO Directives derive from Information Management and Protection Policy, TBM 2009-335 approved by Treasury Board on November 19, 2009. The OCIO directives are mandatory for users to follow. Directives are supported by Standards and Guidelines, where applicable.

Issuing Branch

Approval Date

<yyyy-mm-dd> (Date of approval by final authority)

APPROVAL AND SIGN OFF

Chief Information Officer

Retain as required

(name)

(signature)

(date)

Executive Director, Issuing Branch

(name)

(signature)

(date)

Executive Director, Corporate and Information Services Branch

Retain as required

(name)

(signature)

(date)

Note: Questions related to this policy should be forwarded to OCIO@gov.nl.ca

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DRAFT

CREATION OF GOVERNMENT RECORDS

DIRECTIVE

1.0 Overview

The *Management of Information Act (MOIA)* states that *every public body shall create such government records as are reasonably necessary to document the conduct of its affairs.*

Compliance with this requirement, often referred to by its section title, the *duty to document*, supports democracy in that it reinforces transparency and accountability as public sector employees fulfill their mandate. From an operational perspective, records are necessary to protect the legal and financial obligations of the Government and of the public it serves. Records must be a comprehensive, accurate and complete reflection of business decisions, policy direction, services or transactions. The *MOIA* includes penalties for those who do not comply. This includes disciplinary action as directed by the permanent head of a public body for individuals that willfully fail or refuse to create records as required.

The Office of the Chief Information Officer (OCIO) administers the *MOIA*. The OCIO meets this mandate by providing strategic guidance, policy instruments and advisory services to public bodies to support the growth of information management capacity across the public sector. The *MOIA* authorizes the Office of the Information and Privacy Commissioner (OIPC) to monitor and report on the implementation and operation of records creation within public bodies.

2.0 Purpose and Scope

This directive applies to all public bodies as defined in the *MOIA*. It provides direction to public bodies on the obligation to create records during the conduct of their affairs.

The scope of this directive is limited to the creation of records and does not include other aspects of information lifecycle management such as organization, storage, retention and disposal. For direction on other activities required to manage and protect information see the policy instruments available on the OCIO website: www.ocio.gov.nl.ca.

3.0 The *Management of Information Act*

The *MOIA* mandates that each public body encompassed must have a system for the management of information. In addition to overall information management program requirements and responsibilities, the *MOIA* mandates that each public body ensure it creates records of decisions relating to its functions, policies, decisions, procedures and transactions. This practice is known as the duty to document.

MOIA does not require a public body to document every decision made surrounding daily activities. Rather it seeks to ensure that non-trivial activities, those of long-term value to the public body are recorded. Non-trivial is defined as having a significant or long-term impact on the activities or direction taken by a public body in the fulfillment of its mandate. In documenting these activities, a public body is able to demonstrate the rationale that supported its actions or that guided the evolution of a process or policy direction or expenditure/investment of public funds. An analysis of a public body's programs and services may assist in identifying these types of records.

While *MOIA* places overall accountability for information management with the permanent head of a public body, employees must ensure the business activities they complete on behalf of the a public body are recorded, managed and protected. Section 8 of the *MOIA* includes the following penalty:

8.1 A person who willfully fails or refuses to create a record as required under this Act may be subject to discipline as directed by the head.

4.0 Directive Statements

The permanent head of a public body must ensure that records are created to document any non-trivial activities related to its functions, policy direction, decisions, procedures and transactions. Records may include:

- Corporate records that reflect administrative and management functions, examples of which may include but are not limited to:
 - Executive Functions
 - Communications Management
 - Financial Management
 - Human Resource Management
 - Asset Management
 - Fleet Management
 - Real Property Management
 - Information Management and Protection
 - Information Technology
 - Safety and Security Management
 - Compliance Management
- Operational or Program records that reflect the fulfillment of a public body's mandate. Examples include but are not limited to:
 - Client, claim or case files
 - Project or program records
 - Records of services provided
 - Policy development files

5.0 Roles and Responsibilities

Office of the Chief Information Officer

- Develop, implement and maintain this Directive.
- Oversee education and awareness of this Directive.
- Provide advisory services to support implementation of this Directive.

Permanent Head of a Public Body

- Enforce this Directive across the Public Body.
- Develop, implement and maintain policy and procedures, as appropriate, to support this directive.

Office of the Information and Privacy Commissioner

- The OIPC is the legislative body authorized to audit, monitor and report to the House of Assembly on the implementation of Section 4 of the *MOIA*.

6.0 Definitions

Corporate records - Often referred to as administrative records, are those created by all organizations to support administrative functions, including human resources, general administration, facilities management, financial management, information and information technology management, and equipment and supplies (material) management. *Government record* - A record created by or received by a public body in the conduct of its affairs and includes a Cabinet record, transitory record and an abandoned record.

Operational records - Records that reflect the unique mandate of their organization. Records of programs, projects, and service delivery are examples of operational records. Unlike corporate records, these will be different in each organization.

Non-trivial – Having a significant or long-term impact on the activities or direction taken by a public body in the fulfillment of its mandate. Examples include but are not limited to those:

- with a significant or long-term impact on a public body's actions or processes (e.g. the criteria to receive a benefit is changed)
- with a significant or long-term impact on a policy direction (e.g. a decision is made to follow an international standard in the development of a new policy),
- which result in the commitment or use of resources (e.g. a contract is awarded following an evaluation of proposals; funds are allocated to repair a bridge),
- which result in provision of programs and services (e.g. an assessment of a claim results in the provision of an award or benefit), or
- which reflect a unique outcome when procedures or requirements used as a regular course of business are followed (e.g. a request for a license is denied on medical grounds).

Record - A record means a correspondence, memorandum, form, paper, parchment, manuscript, map, plan, drawing, painting, print, photograph, magnetic tape, computer disc, microform, electronically produced document and other documentary material regardless of physical form or characteristic

7.0 Acronyms

MOIA	Management of Information Act
OCIO	Office of the Chief Information Officer
OIPC	Office of the Information and Privacy Commissioner

8.0 Compliance

Mandatory compliance

Compliance with this directive is mandatory for the Government of Newfoundland and Labrador and public bodies under the *MOIA*.

Penalty for failure to comply

A person who wilfully fails or refuses to create a record as required by the *MOIA* may be subject to discipline as directed by the head of the public body.

9.0 Directive Monitoring and Review

The OCIO is responsible for reviewing and maintaining the content of this Directive as per the Information Management and Protection Policy, TBM 2009-335.

10.0 References

Management of Information Act

Information Management and Protection Policy, TBM 2009-335

OCIO Directive *Creation of Government Records*

11.0 Revision History

Date Reviewed	Reviewed By
2015-07-10	Director, ATIPP Office
2015-07-07	Information Management Directors Forum
2015-08-27	Executive Director, Corporate and Information Management Services
2015-08-27	Director, Information Management Services

*this approach has not been approved.
SAs Pawn.*

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GUIDELINE – IMPLEMENTING THE REQUIREMENT TO CREATE GOVERNMENT RECORDS

Guideline (Definition): OCIO Guidelines derive from **Information Management and Protection Policy, TBM 2009-335** approved by Treasury Board on November 19, 2009. Guidelines are recommended actions, general approaches and operational behaviors. They recommend actions and are not compulsory, as they take into consideration the varying nature of information management programs. Guidelines are generally a description that clarifies what should be done and how to achieve the objectives set out in policies and directives (source; ISO/IEC 17799:2005).

Issuing Branch	
Approval Date	<yyyy-mm-dd>
Authorizing Directive <i>(Where applicable)</i>	
Authorizing Body	e.g. GRC, Security Council
GRC Approval Number	

APPROVAL AND SIGN OFF

Executive Director, Issuing Branch			
	(name)	(signature)	(date)
Executive Director, Corporate and Information Management Services Branch	Retain as required		
	(name)	(signature)	(date)

Note: Questions related to this policy should be forwarded to OCIO@gov.nl.ca

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Implementing the Requirement to Create Government Records Guideline

1.0 Overview

The *Management of Information Act* (MOIA) states that every public body has a requirement to create records, as is reasonably necessary, to record the conduct of its affairs. Compliance with this requirement, often referred to as the duty to document, supports democracy in that it reinforces transparency and accountability as public sector employees fulfill their mandate. From an operational perspective, the availability of complete and accurate records allows the Government of Newfoundland and Labrador and its Public Bodies to protect the legal and financial rights of the Government and of individuals directly affected by its activities.

Creation of government records is important because:

- The availability of records enable public bodies to demonstrate transparency and accountability.
- Public bodies rely on the timely and accurate creation of records to support efficient planning and management as well as the provision of public services.
- Records may be required as evidence of a public body's business activities. The quality of the information contained within should be at a high level.
- Records may be appraised as historically or culturally significant to the people of Newfoundland and Labrador. Such records are retained in perpetuity by The Rooms Corporation.
- The MOIA includes penalties for non-compliance.
- The MOIA authorizes the Office of the Information and Privacy Commissioner (OIPC) to monitor and report on the implementation and operation of records creation within public bodies.

Records should be a comprehensive, accurate and complete reflection of business affairs as these records may be required by individuals not involved in the business event and they may need to be produced and scrutinized for a legal, audit, review or disclosure process (e.g. response to a request made under the *Access to Information and Protection of Privacy Act*).

The requirement to create records involves documenting non-trivial activities relating to the functions, policies, decisions, procedures and transactions for a public body falling under the MOIA. Non-trivial is defined as having a significant or long-term impact on the activities or direction taken by a public body in the fulfillment of its mandate. Further examples to help a public body decide whether something is non-trivial can be found in section 8.0. The requirement is not meant to create inefficiencies in the operation of the public body in an attempt to document every decision.

A public body must ensure that record creation practices support compliance with legal and operational needs. This document contains guidance for a public body to consider when implementing the requirement to create records.

Implementing the Requirement to Create Government Records Guideline

2.0 Purpose

This Guideline will assist public bodies in fulfilling the requirement to create government records as specified in section 4 of the *MOIA*.

3.0 Scope

This guideline applies to all public bodies as defined in the *MOIA*.

The scope of this guideline is limited to the creation of records and does not include other aspects of information lifecycle management such as organization, storage, retention and disposal. For direction on other activities required to manage and protect information see the policy instruments available on the OCIO website: www.ocio.gov.nl.ca

4.0 Background

4.1 Operational Requirements for Recordkeeping

The requirement to create records to support government business processes is not new. For as long as there have been public services, there have been records that document decisions, policy direction, transactions and services provided. For many processes, the simple act of providing a service dictates how records are created. For example, a member of the public submits an application to a service counter; an employee reviews the application to verify the information is correct; enters the data into a system and then produces a license, a permit, a response, etc. thus completing the transaction.

Typically there are forms, templates and operating procedures that the employee is provided when they begin working in that program that are used as a reference. Employees working in specialized areas may have industry-specific requirements they incorporate into their daily practices. Accounting professionals for example rely on the International Financial Reporting Standards. A social worker would have received specialized training in the creation and maintenance of case files. An engineer would apply their own practices to creating an inspection report. Employees responsible for managing processes and directing work, are subject matter experts and are relied upon to define and follow requirements. First and foremost, employees tend to focus on what they need to do their job as directed by their manager or supervisor. Legislative requirements should be embedded in these operational processes.

4.2 Legislative Requirements for Recordkeeping

The requirement to create records is not a new one for public bodies; there are other pieces of legislation that prescribe recordkeeping. Examples of government-wide legislation that prescribes records creation requirements include *The Evidence Act*, *The Occupational Health and Safety Act* and the *Financial Administration Act*.

In addition to this type of overarching legislation, each public body may find that record creation requirements are contained within the legislation they are mandated to administer. For instance, the *Vital Statistics Act* identifies specifics around the creation of records *related to this service including what records will be created, how they will be managed, etc.* Listings of legislation by government department are available on the House of Assembly website.

Each public body should determine the requirements for creating records needed to fulfill their own legal requirements.

Implementing the Requirement to Create Government Records Guideline

4.3 The Management of Information Act

Section 6 of the *Management of Information Act* requires:

- (1) A permanent head of a public body shall develop, implement and maintain a record management system for the creation, classification, retention, storage, maintenance, retrieval, preservation, protection, disposal and transfer of government records.*

The *MOIA* mandates that each public body have a system for the management of information. While overall accountability for information management rests with the permanent head, employees should ensure the business activities they complete on behalf of the Government are recorded, managed and protected.

The *MOIA* was amended in 2015 to accommodate recommendations of *The Report of the 2014 Statutory Review: Access to Information and Protection of Privacy Act (ATIPPA)* as follows:

Section 4 – Duty To Document:

- 4 (1) Every public body shall create such government records as are reasonably necessary to document the conduct of its affairs.*
- 4 (2) Implementation and operation of Section 4(1) is subject to monitoring or audit and report to the House of Assembly by the Office of the Information and Privacy Commissioner.*

Section 8 of the *MOIA* was amended to include a penalty for:

- 8 (1) A person who wilfully fails or refuses to create a record as required under this Act may be subject to discipline as directed by the head.*

The *OIPC* has a new role within the *MOIA*. It has been given the authority to monitor or audit the duty to create records and report to the House of Assembly on findings.

The International Standards Organization has issued a standard that provides guidance on this issue. The standard for *Information and Documentation Records Management* (hereafter *ISO 15489-1*) was used extensively in the creation of this guideline.

5.0 Creation of Government Records

5.1 Who is Responsible for Records Creation?

Government employees at all levels are responsible for the creation of records. It is important that employees understand that the *MOIA* holds them accountable for the creation of records. Management-level employees, regardless of their title (e.g. manager, supervisor, team lead, coordinator, etc.), who direct work should understand that they have an enhanced role in records creation in the same manner that they are accountable for other resource usage associated with the work (e.g. budget, overtime, supplies, etc.). Creating records that document business processes and services is critical in recording how a public body's mandate is fulfilled. Managers are critical in developing record creation requirements and then ensuring that the employees that they direct and monitor understand and meet these requirements.

Information management employees support the management and protection of the records once they have been created. Information management services vary from each public body and are dependent on resource availability. For example, some public bodies establish file registries or record digitization services to support business processes. As information management employees are not subject matter experts in all functional areas of a public body, they rely on the employees that create the records to understand and meet requirements for records creation.

5.2 When Does a Government Record Need to be Created?

The ISO 15489-1 standard on *Information and Documentation Records Management* (hereafter ISO 15489-1) under Section 7.1 includes the following guidance related to the creation of records:

Records are created, received and used in the conduct of business activities. To support the continuing conduct of business, comply with the regulatory environment, and provide necessary accountability, organizations should create and maintain authentic, reliable and useable records, and protect the integrity of those records for as long as required. To do this, organizations should institute and carry out a comprehensive records management programme which includes:

- (A) determining what records should be created in each business process and, what information needs to be included in the records.*
- (B) deciding what form and structure records should be created and captured, and the technologies to be used.*

Public bodies should take the lead in establishing other additional requirements for the creation of records which meet their specific business or legal requirements. Some general best practices on when to create a record include when a non-trivial decision or transaction is made that:

- Guides policy development.
- Reflects the position of the public body on a particular issue.
- Impacts how programs and services are provided.
- Results in a legal or financial commitment.
- Establishes when information is recorded to initiate or complete a process or transaction or provide a service.
- Identifies when it is required for compliance or accountability.
- Documents the development of decision, policy or creation of briefing materials.
- *Additional guidance as defined within each public body.*

Implementing the Requirement to Create Government Records Guideline

5.3 What Constitutes a Government Record?

The definition of a government record, including those of public bodies, is a record created or received by a public body in the conduct of its affairs and includes a Cabinet record, a transitory record and an abandoned record.

ISO 15489-1 Section 7.2.1 states that:

A record should correctly reflect what was communicated or decided or what action was taken. It should be able to support the needs of the business to which it relates and be used for accountability purposes.

Government records should be a comprehensive, accurate and complete reflection of business affairs. In creating government records, it is important for public bodies to ensure the quality of information contained is sufficient in the event that records are:

- Produced and scrutinized in the event of a legal, audit, review or disclosure process (e.g. ATIPPA).
- Required by individuals not involved in the creation of the records.

In creating a government record, public bodies should ensure that records exhibit the following characteristics:

- A record is comprehensive, meaning it contains all elements required to document a complete decision, transaction, process etc.
- A record is accurate, meaning that the information correctly reflects the decision, transaction, process etc.
- A record is complete, meaning that in addition to the content of the record it contains the structure and context required to understand the decision, transaction, process etc. being recorded.
- A record documents the regular course of business operations meaning that activities necessary, normal, and incidental to the business are followed when a record is created.
- A record is created within a time period that is reasonable this aids in developing clear, accurate content.

It should be noted that in order to demonstrate due diligence in a function, policy directive, decision, procedure or transaction, the record keeping requirement may need to include multiple records that support one process, transaction, service, etc. Examples of this would be case, claim, client or project or policy files. Each business process will need to determine what is required to constitute a record.

To meet these requirements each public body should:

- Determine what constitutes a government record of the business activities it completes to support its mandate. This is based on many variables including nature of services provided, legislative requirements, operational needs and industry standards.
- Ensure requirements are communicated to employees within the program/service as a part of orientation and ongoing management.

Implementing the Requirement to Create Government Records Guideline

6.0 Recommended Approach

The following sections include steps a public body may wish to consider when assessing and implementing the requirement to create records. Some public bodies may choose to use another method to meet its requirements to create records. The level of effort required and resources used will vary between public bodies. The following high-level activities are recommended:

- Create/Execute an Implementation Plan;
- Complete a Program/Service Assessment of Records Creation;
- Develop an Organizational Policy; and
- Complete Communications, Education and Awareness Activities for the Public Body.

6.1 Create/Execute An Implementation Plan

It is recommended that each public body create an implementation plan to assess and implement the requirement to create records. At the discretion of the permanent head of the public body, the senior manager responsible for the information management program could lead this process and provide support to members of the management team as required. For the purpose of this document the employee assigned to lead this process is identified as a process owner. This resource will need to ensure communications, education and training related to the requirement to create records is incorporated into the overall information management program for the public body. Elements that will need to be identified in the initial planning may include:

- Identify a senior director or board member to act as the sponsor for the process/project. This may be the permanent head or another designated individual.
- Identify key stakeholders that need to be engaged. This will include employees that will need to support information gathering, development, etc. and the managers that will need to make time and resources available.
- Define governance requirements including who will need to review and approve deliverables. Examples of deliverables include: completed and approved assessment workplan with timelines, approved policy document specific to the public body, etc. Depending on the program area under review there may need to be additional stakeholders engaged.
- Engage the Information Management division, if one exists, to understand what internal requirements have been defined by the public body as well as what support or services are available (e.g. they may have decided on an approval process or they may internal tools to support the process).
- Develop an initial plan that will provide a scope, resource requirements and timeline.
- Decide on how the process will be communicated to managers, and other staff engaged in the analysis, development and implementation and ongoing use of requirements.
- Included in the deliverables at this stage should be the eventual documentation of the assessment to produce an overall public body policy on records creation.

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6.2 Implementation Roles and Responsibilities

Role	Responsibility
Permanent Head	<ul style="list-style-type: none"> The permanent head of a public body has overall accountability for the implementation and operation of an information management program. This includes the creation of records. While this requirement is written directly in the legislation it should be referenced throughout the process to reinforce its importance.
Executive / Board member responsible for IM	<ul style="list-style-type: none"> Review and approve strategy, planning, deliverables, and ensure development of an appropriate plan for the implementation/maintenance of the requirements. Communicate to other executive/board members on process and on what is required from their program/services to support compliance. Establish resources as required to manage the requirement to create records. Oversee public body specific communications, education and awareness on records creation.
Process Owner	<p>The process owner is the employee assigned the task of leading the implementation of the requirement to create records. This role may be assigned to the Senior manager responsible for IM as described below.</p> <ul style="list-style-type: none"> Develop an implementation plan that includes an assessment of records strategy for implementation with deliverables and communication/awareness activities to support the new requirement. Develop/execute an assessment of records creation practices for programs and services within the public body. Support managers in completing program service assessment of records creation.
Senior manager responsible for IM	<ul style="list-style-type: none"> Support assessment of records creation practices. Support development/update of organizational policy instruments to support creation of records. Implementation of organizational policy/procedures on records creation.
Program Managers/ Direct Supervisors	<ul style="list-style-type: none"> Program managers include employees with management accountability for a business process, program or service. These may be a director, manager, supervisor, team lead or any other position as defined by a public body. Because they understand the functions and operations within their mandate, they are in the best position to provide information, identify requirements, etc. They also direct staff members to follow good record creation procedures so their engagement is essential in compliance. As management, they may also control and administer budget and other resources and therefore need accurate and complete records to support and document their actions. Responsibilities that a public body may consider assigning to a

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Role	Responsibility
	<p>program manager include:</p> <ul style="list-style-type: none"> • Providing significant support to the Process Owner in the assessment activity for the program/service area for which they are responsible. • Define/update organizational requirements for creation of government records within the program/service for which they are accountable.
Information Management Practitioners	<ul style="list-style-type: none"> • Each public body should define how each type of information management practitioners, if available, will support the implementation
Employees	<ul style="list-style-type: none"> • Employees may be requirement to support the implementation by providing information related to their work processes as required to determine record creation requirements • Complete government-wide/internal training on the requirement to create records.

6.3 Program/Service Assessment of Records Creation

Each program or service or line of business within a public body will have unique requirements that are specific to the programs they deliver. This assessment is used to identify specific requirements related to records creation. For example the form and type of information required to issue a license for a motor vehicle will vary from what is needed to provide a program to an individual in the Labour Market Program.

ISO 15489-2 Section 3/2.4 includes the following guidance on the identification of requirements for records:

These requirements for records are identified through a systematic analysis of business needs, legal and regulatory obligations and any broader responsibilities to the community. An assessment of the organization's exposure to risk if records are not created and kept will also help identify requirements. The step also provides the rationale for the creation, maintenance and disposition of records, and the benchmark for measuring the performance of existing systems.

6.3.1 Create a Listing of Programs/Services and Associated Records

Public bodies may find information about existing programs/services in the following areas:

- Legislative requirements including those prescribed in government-wide legislation (e.g. Occupational Health and Safety Act) and legislation that is specific to the public body.
- Existing procedures or documentation (e.g., forms and templates) used by employees may be available that includes information about what information is to be included in records, particularly if there is personal or confidential information involved.

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- Business planning documents may include responsibilities of the department broken down by program area.
- Systems documentation may contain business process descriptions used during development and implementation.
- Information management tools may provide information about the records and requirements. It will be important to confirm what the IM Division has available. Potential sources may include:
 - A records inventory as described in the OCIO Guideline *Records and Information Inventory*;
 - A legal and regulatory framework as described in the OCIO Guideline *Legal and Regulatory Framework*; and
 - Records retention and disposal schedules as described in the OCIO Standard *Records Retention and Disposal Schedules*.
- Other internal resources as identified through key stakeholders.

A Process and Record Assessment form is included in Appendix B. This activity may be assigned to the process owner as described in section 6.2 or to a manager with the assistance of the process owner.

6.3.2 Documenting Requirements

The information gathered about the process would be accumulated to identify which records will be created and the information that will be kept for each record. There are many potential sources for this information:

- Legislative requirements may detail information about the service or record requirements. A listing is available on the House of Assembly website.
- Industry standards available through professional associations may detail requirements for records creation (e.g., International Financial Reporting Standards for financial records, Project Management Body of Knowledge for project management records, etc.)
- Existing government-wide requirements or practices may already define record requirements (e.g., Occupational Health and Safety Reporting forms, Communications Templates, etc.)
- Operational needs identify what information employees need to include to document a transaction or to provide a program or service (e.g., if a client's name, address and phone number are required to issue a payment or to provide a service then this information should be included in the record).

Things to consider in documenting requirements:

- What records does the public body need to retain to provide evidence of this activity, program or service?
- Consider the various formats used to generate information related to an activity, program or service is completed. For example there may be a paper application form, data entered into a system, memos or emails, meeting records, decision documents, etc. The public body will need to determine what is needed from a content and format perspective for each type of information created.

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- Identify which record is the best possible source in each instance. This will make other information associated with the process redundant and therefore unnecessary to keep.

6.4 Develop an Organizational Policy

Following the assessment of programs/services, a public body will be in a position to identify which records need to be created and can establish an organizational policy and supporting procedures to support this objective.

ISO 15489 Section 6.2 includes the following guidance related to policy:

Organizations should define and document a policy for records management. The objective of the policy should be the creation and management of authentic, reliable and useable records, capable of supporting business functions and activities for as long as they are required. Organizations should ensure that the policy is communicated and implemented at all levels of the organization.

ISO 15489-2 *Information and Documentation – Records Management – Guidelines* (hereafter ISO 15489-2) section 2.2 includes the following guidance related to policy:

A records management policy statement is a statement of intentions. It sets out what the organization intends to do and, sometimes, includes an outline of programme and procedures that will achieve those intentions. However a policy statement on its own will not guarantee good records management: critical to its success are endorsement and active and visible support by senior management and the allocation of the resources necessary for implementation. An effective policy statement will, therefore, identify a senior member of staff with lead responsibility for records management and overseeing policy and programme implementation.

Each public body can define their own organizational policy to be applied across the organization. This will be the general requirements and best practices that all employees of the public body will be required to follow. It will also take into consideration government-wide requirements such as the OCIO *Information Management and Protection Policy Framework*; it will leverage tools that are available through other Government organizations including the OCIO, OIPC and the Centre for Learning and Development. The organizational policy is important because it provides a foundation for the program specific requirements and is an input to communications.

6.4.1 Develop Organizational Policy on Records Creation

The public body will need to review existing information management policies to determine whether they have existing policies or direction related to the creation of records. Public bodies may update existing information management policies to reinforce records creation requirements if such documentation already exists.

This activity may be assigned to the process owner as described in section 6.2. Otherwise it may be assigned to the policy development practice within a public body if the existing protocol requires. For a template policy please see Appendix A.

Content within the policy may include:

- General principle policy statement.
- Roles and responsibilities.
- Record requirements.

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- When to create records.
- Use of specific technology.
- Other requirements as deemed necessary by the public body.

6.4.2 Define Policy Roles and Responsibilities

Public bodies may wish to define roles and responsibilities for ongoing records creation as a regular course of business. Roles and responsibilities to be considered may include:

Role	Responsibility
Permanent Head	<ul style="list-style-type: none"> • The permanent head of a public body has overall accountability for the implementation and operation of an information management program. This includes the creation of records. • The permanent head should approve any organization-wide policy and support implementation and ongoing management of the full information management programme, inclusive of the requirement to create records. • The permanent head will also need to support distribution of government-wide awareness materials and employee participation in government-wide training sessions. Such activities will support the work of the public body in developing its own plans in this area.
Executive / Board member responsible for IM	<ul style="list-style-type: none"> • This resource will help with creation of the policy document using requirements identified in the assessment process related to requirement to create records. • The resource may lead or direct the creation of procedures documents as well. These documents will support on-going management of the requirement to create records. • This resource may also be tasked with oversight of the coordination of public body specific communications, education and awareness on records creation. The actual activities may be directed for completion by others, but oversight to ensure the information reaches all employees will be key to success.
Senior manager responsible for IM	<ul style="list-style-type: none"> • Develop (where directed) or incorporate any public body policy or procedures on requirement to create records into the information management program. • Implementation of organizational policy on records creation, in some cases, this task may be delegated to this manager position by the executive responsible. • Maintenance of organizational policy instruments related to the requirement to create records.
Program Managers/ Direct Supervisors	<ul style="list-style-type: none"> • Managers will be responsible for ensuring that new staff under their supervision are made aware of their responsibility to document and any organization-specific policies/procedures. • Managers can help in the development of policy/procedures as they can ensure their program area requirements are reflected in public body documents. • Additional responsibilities that a public body may consider assigning to a program manager may include:

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Role	Responsibility
	<ul style="list-style-type: none"> • Define/update internal requirements for creation of government records within the program/service for which they are accountable. • Communicate requirements for creation of government records to employees within the program/service for which they are accountable. This may also include orientation of staff in program area documentation requirements. • Provide instruction to employees regarding which government records have legal value and must be managed as per the <i>MOIA</i>. • Verify that requirements for the creation of government records within the program/service for which they are accountable are being fulfilled by employees.
<p>Information Management Practitioners</p>	<ul style="list-style-type: none"> • Each public body should define how each type of information management practitioners, if available, will support the requirement to create records. This may be reflected in organizational policy/procedures documents. They may also need to define a role for the initial implementation versus ongoing management.
<p>Employees</p>	<ul style="list-style-type: none"> • Compliance with legal requirement to create records. • Employees should be aware and follow all government-wide IM requirements. • Employees should apply all requirements for creation of government records within the program/service in which they work. This may be reflected in public body policy/procedures documents. • Notify manager if record creation requirement require update as a result of legislative or operational change.

6.5 Communications, Education and Awareness

Public bodies will need to develop a plan to educate employees and to reinforce this education with ongoing communication or awareness activities. The OCIO Guideline *Information Management Education and Awareness for Government Employees* provides best practices on developing a plan. The scope and nature of communication will be commensurate to the level of change required to meet the requirements introduced. Potential activities may include:

- Timed communications to announce the initiation of the process, the changes, follow up after implementation, progress reports, compliance reporting, etc.
- Initial training session to provide an overview of the need to create records, the action required by employees, how compliance will be monitored and disciplinary action.
- Placing standards, procedures and documentation in an accessible central location for employees (e.g. Shared Drive, Intranet or Document Management System).

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- Creating availability of coaching and support on an ongoing basis.
- Follow up communications to reinforce training.
- Reinforce with employees the continuous learning process and openness in contacting the manager, supervisor, IM division, etc. If employees are uncertain of requirements specific to their positions.
- Inclusion of requirements specific to the public body in orientation for new employees.

Encourage employees to complete training through the *Centre for Learning and Development* or other available sources. Centre for Learning and Development materials include:

- **Information Management: A Guide for Managers:** This e-learning course is available to all employees registered in the Centre for Learning and Development's Resources Management Package. It is accessible at www.psaccess.ca and requires a unique User ID and Password. Employees can request an account by emailing LMSSupport@gov.nl.ca.
- **IM@Work: Making Information Management Work For You:** This e-learning course is available to all employees through the Centre for Learning and Development's Learning Management System. It communicates obligations under the Management of Information Act as well as best practices for IM.

This activity may be assigned to the process owner and other stakeholders (e.g., departmental Director of Communications) as described in section 6.2.

7.0 Roles and Responsibilities

7.1 Permanent Heads of Public Bodies

- Implementation of the requirement to create records as a part of the information management program.
- Provide public body specific education and awareness to employees to ensure they create records as required under MOIA.
- Provide information to the OIGC on compliance as required.

7.2 OCIO

- Develop, implement and maintain this Guideline.
- Oversee education and awareness of this Guideline.
- Provide advisory services to support implementation of this Guideline.

7.3 OIPC

- Meet requirements for compliance monitoring as stated in the MOIA.

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8.0 Definitions

Corporate records - Often referred to as administrative records, are those created by all organizations to support administrative functions, including human resources, general administration, facilities management, financial management, information and information technology management, and equipment and supplies (material) management. *Government record* - A record created by or received by a public body in the conduct of its affairs and includes a Cabinet record, a transitory record and an abandoned record.

Operational records - Records that reflect the unique mandate of their organization. Records of programs, projects, and service delivery are examples of operational records. Unlike corporate records, these will be different in each organization.

Non-trivial - Having a significant or long-term impact on the activities or direction taken by a public body in the fulfillment of its mandate. Examples include but are not limited to those:

- with a significant or long-term impact on a public body's actions or processes (e.g. the criteria to receive a benefit is changed)
- with a significant or long-term impact on a policy direction (e.g. a decision is made to follow an international standard in the development of a new policy),
- which result in the commitment or use of resources (e.g. a contract is awarded following an evaluation of proposals; funds are allocated to repair a bridge),
- which result in provision of programs and services (e.g. an assessment of a claim results in the provision of an award or benefit), or
- which reflect a unique outcome when procedures or requirements used as a regular course of business are followed (e.g. a request for a license is denied on medical grounds).

Record - A record means a correspondence, memorandum, form, paper, parchment, manuscript, map, plan, drawing, painting, print, photograph, magnetic tape, computer disc, microform, electronically produced document and other documentary material regardless of physical form or characteristic

9.0 Acronyms

ATIPPA	Access to Information and Protection of Privacy Act
GRC	Government Records Committee
OCIO	Office of the Chief Information Officer
OIPC	Office of the Information and Privacy Commissioner

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10.0 Monitoring and Review

The Corporate and Information Management Services (CIMS) Branch is responsible for monitoring and reviewing this Guideline.

11.0 References

Management of Information Act

Information Management and Protection Policy, TBM 2009-0359

The Information Management Technical Competency Framework

OCIO Directive *Creation of Government Records*

OCIO Guideline *Implementing the Requirement to Create Government Records*

OCIO Guideline *Legal and Regulatory Framework*

OCIO Guideline *Information Management Education and Awareness for Government Employees*

OCIO Guideline *Information Management Policy Instruments*

ISO 15489 Standard *Information and Documentation*

12.0 Revision History

Date Reviewed	Reviewed By
2015-07-10	Director, ATIPP Office
2015-07-07	Information Management Directors Forum
2015-08-27	Executive Director, Corporate and Information Management Services
2015-08-27	Director, Information Management Services

Implementing the Requirement to Create Government Records Guideline

Appendix A: Sample Policy Template

Overview

The *Management of Information Act* requires that the permanent head of a public body enforce a requirement to create such government records as are reasonably necessary to document the conduct of its affairs. The <public body name> is mandated to:

Add any additional information related to the mandate of its information management relevant to the requirements to create government records.

Government records should be a comprehensive, accurate and complete reflection of business affairs as these records may be required by individuals not involved in the business event and they may need to be produced and scrutinized for a legal, audit, review, or disclosure process. This policy compliments government wide requirements including the *Requirement to Create Government Records Directive* issued by the Office of the Chief Information Officer (OCIO) by outlining internal requirements that are specific to the public body.

Purpose

This Policy will provide public bodies with instruction on how to comply with the requirement to create government records.

Scope

This policy applies to all staff, contractors, consultants, partners, students, temporary workers, volunteers, vendors, agents, third parties and other persons working on behalf of the <Public Body> (hereafter referred to as individuals).

Public bodies are strongly advised to seek a legal opinion when identifying record series, programs or services to which this policy does NOT apply. This may be in the event that there is a records series, program or service that follows another organizational policy or external industry standard (e.g. psychological counselling sessions). Include any required references to ensure individuals are clear on the requirement they must follow.

Policy Statements

Note these policy statements are provided as sample content. Each public body may choose to incorporate, eliminate or modify these examples or add new content to reflect their unique requirements.

- a. Individuals must review and comply with all OCIO policies, directives and standards related to the requirement to create government records.
- b. Individuals must create a government records to document any non-trivial activities relating to the functions, policies, decisions, procedures and transactions relating to the public body..

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- c. Individuals will use the forms, templates and standards provided by *(insert the internal authority that will provide)* that documents the conduct of its affairs as a regular course of business.
- d. Individuals will create records that are comprehensive, accurate and complete reflection of business affairs.
- e. *Additional program/service areas that may require the public body to set policy requirements may include:*
 1. *Use of email by individuals to reflect decision making: Guidance may include that decisions made via email are filed in the corporate repository, trim, etc. Follow a designated template, include required content, includes final email in a thread, etc.*
 2. *Use of note to file: Individuals may create a note to file in the event a verbal communication (e.g., conversation, voice mail, etc.) supports or influences a decision. The use of note to file is common in many professions/industries. It is a way to document information that is not recorded elsewhere in the regular business process. Considerations in note to file may include legibility, comprehensive, attributable, timely, etc.*
 3. *Meeting minutes: Meeting minutes are the most common means through which decisions arrived at verbally are documented. Public body may establish which types of meeting require minutes. Examples may include standing committees, working groups, management meetings, status updates, etc.*
 4. *Record of a decision: A record of a decision would be a narrative of the decision reached in a verbal manner that includes relevant stakeholders, dates, time etc. The purpose of this document is to document a decision made by an individual in the course of their work rather than request signoff.*
 5. *Decision document: A decision document typically describes an issue, its status, options and a recommendation. The purpose of this document is to obtain sign-off from a management-level employee.*

Roles and Responsibilities

Permanent Head of a Public Body

- Enforce this Directive across the Public Body
- *Additional requirements specific to the public body to be included as required.*

Program Managers/Direct Supervisors

- Define internal requirements for creation of government records within the program/service for which they are accountable.
- Communicate requirements for creation of government records to employees within the program/service for which they are accountable.
- Verify that requirements for the creation of government records within the program/service for which they are accountable are being fulfilled by employees.

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- *Additional requirements specific to the public body to be included as required.*

Information Management Practitioners

- Maintain this policy and provide additional support as required.
- Assist program managers/direct supervisors managers in defining record creation requirements
- Facilitate compliance reporting as required by the permanent head of a public body
- *Additional requirements specific to the public body to be included as required.*

Individuals

- Be aware of the responsibilities as outlined in this Policy.
- Be aware of internal requirements for requirement to create government records within the program/service in which they work
- Adhere to this policy and any related legislation, policies, directives or standards.
- *Additional requirements specific to the public body to be included as required.*

Definitions and Acronyms

Definitions

Corporate records - Often referred to as administrative records; are those created by all organizations to support administrative functions, including human resources, general administration, facilities management, financial management, information and information technology management, and equipment and supplies (material) management.

Individuals -staff, contractors, consultants, partners, students, temporary workers, volunteers, vendors, agents, third parties and other persons working on behalf of the <public Body>

Operational records - Records that reflect the unique mandate of their organization. Records of programs, projects, and service delivery are examples of operational records. Unlike corporate records, these will be different in each organization.

Acronyms

OCIO	Office of the Chief Information Officer

Compliance and Enforcement

Mandatory compliance

Compliance with this <Public Body> policy is mandatory

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Compliance monitoring

Compliance monitoring of this Policy is the responsibility of *<identify the position of group that will monitor compliance>*

Penalty for failure to comply

Willful non-compliance with this Policy, including contravention through negligence, may result in disciplinary action as per *<identify any HR related requirements>*

Monitoring and Review

The *<identify the position of group>* is responsible for monitoring and reviewing this Policy in accordance with processes set forth by the *<public body>*

References

Include Links to all published information referenced in the document, including:

Management of Information Act

DRAFT

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Appendix B: Process and Record Assessment Form

This is a sample template that can be modified or used by a public body to identify and track the types of records it creates. Fields can be added or deleted as required to provide the level of detail required by the public body.

Record of Official Files

Division or Program/Service Area	Program/Service	Records that must be created	Format – Paper or Electronic record (email, system date)	Responsible Owner

Excerpt from
ATIPPA Review

10. INFORMATION MANAGEMENT

10.1 Information management and duty to document

The last statutory review of the *ATIPPA* conducted by John Cummings made several recommendations to enhance the information management systems of public bodies. There was no recommendation to require officials to document their decisions. However, “duty to document” is gaining status in government and information management circles. It has become a rallying cry for information and privacy commissioners⁷³ and, it seems, for good reason: how can they properly oversee laws on privacy and access to information in the absence of good records or, in some cases, any records at all? This issue was raised in the last statutory review, and it has been an issue in the United Kingdom.⁷⁴

The *ATIPPA* assumes that records have already been created. The *Act* does not address how records should be managed, apart from the duty to protect personal information. A separate piece of legislation applies to records of public bodies excluding municipalities, the *Management of Information Act*.⁷⁵

In September 2014, the Committee wrote the Office of Public Engagement and asked for an update on the progress in implementing the proposals relating to records and information management recommended in the Cummings report. The OPE reported on 31 public bodies that are serviced by the Office of the Chief Information Officer (OCIO), including all core government departments and some agencies. It stated there had been significant progress, and that all 31 public bodies have

had their information management systems assessed “in a consistent manner” through a tool developed by the OCIO. However, they also stated there are some gaps in performance and that the development of information management programs is at “varying levels of maturity” in both departments and other public bodies.⁷⁶

The OPE provided some additional comments on the “gaps” it identified. It stated there are many variables at play, including the size of the organization, how long the information management program has been in place in a public body, the allocation of resources, and the complexity of record holdings. Despite the identified issues, the OPE says use of the assessment tool has led to “an overall increase in the priority assigned to [information management] by departments.”

It should hardly need to be stated that strong information management policies and practices are the foundation for access to information. Without those policies and practices, there is no certainty that the information being requested exists, or that it is usable even if it does exist. Information management was a concern raised by just a few submissions, mostly in the context of the discussion of the duty to document.

Duty to document

Canada’s Information Commissioner, Suzanne Legault, recommended a legal duty to document decisions, “including information and processes that form the rationale for that decision.” Commissioner Legault felt that without such a legal requirement, there is no way to

⁷³ Communiqué, Canada Ombudspersons and Commissioners, 9 October 2013.

⁷⁴ UK Justice Committee, *Post-legislative scrutiny of the Freedom of Information Act 2000* (2012), pp 55–56.

⁷⁵ SNL 2005, c M-1.01.

⁷⁶ Government NL, Letter from Hon. Steve Kent, 17 October 2014.

ensure all information related to the decision making process is recorded. She was also concerned “the risk is compounded by the advent of new technologies used in government institutions, such as instant messaging.”⁷⁷

The OIPC also addressed “duty to document” and promoted the view expressed in the joint resolution by Canada’s Information and Privacy Commissioners,⁷⁸ by recommending “the creation of a legislated duty on public bodies to document any non-trivial decision relating to the functions, policies, decisions, procedures and transactions relating to the public body.” The OIPC also emphasized the need for internal policies and procedures to ensure documents created under such a direction are “maintained, protected and retained in proper fashion.”⁷⁹ The OIPC said the suggested legislative changes could be placed within the *ATIPPA*, in another statute, or on their own in a stand-alone law.

The OPE’s response to the Committee’s written inquiry suggests a high level of awareness of the major issues involved in information management, including the need to protect personal information. It is also apparent from their assessment that more must be done.

Public bodies have no choice about complying with the *ATIPPA*. They have a legal obligation to do it. If

⁷⁷ Information Commissioner of Canada Submission, 18 August 2014, p 8.

⁷⁸ *Supra* note 73.

⁷⁹ OIPC Submission, 16 June 2014, p 80.

some public bodies do not have the necessary resources for a strong information management system, senior officials have a responsibility to assign the necessary resources to fix the problem.

Conclusion

As of January 2015, the *ATIPPA* has been in place for a decade. Most of the public focus has been on the access provisions of the *Act* and the practices around its administration. However, it must be realized that the success of the *ATIPPA* system depends entirely on maintaining reliable records. Senior officials must ensure that appropriate resources are allocated to do the job completely, and that all public bodies understand the essential role that information management plays in a well-functioning access to information system. It is appropriate to observe that public officials, including political leaders should have a duty to document their decisions. A useful guide is the recommendation from the Newfoundland and Labrador Information and Privacy Commissioner.

The Committee concludes that such a duty does not belong in the *ATIPPA*, or in a stand-alone *Act*. The legislated duty to document should be expressed in the *Management of Information Act*. Implementation and operation of any such legislative provision should be subject to such monitoring or audit and report to the House of Assembly by the OIPC as the Commissioner considers appropriate.

10.2 Records in the form requested and machine-readable format

Many access to information laws allow a requester to state the form in which they wish to receive records or information. But there is a clause in most access laws that makes complying with the request conditional. In the case of the *ATIPPA*, it is where the record can be “produced using the normal computer hardware and software and technical expertise of the public body,” and where “producing it would not interfere unreasonably with the operations of the public body.” Also, “where a

record exists, but not in the form requested by the applicant,” it is left up to the head to decide whether to “create a record in the form requested.”

Increasingly, governments are committing to release datasets and other types of material that can be further analyzed by the public. The Open Government and Open Data initiatives of the Government of Newfoundland and Labrador also contemplate this approach. This is leading to increased demand on the part of the

IMPLEMENTATION TABLE FOR ATIPPA REVIEW COMMITTEE'S 90 RECOMMENDATIONS (2015)

RECOMMENDATIONS	IMPLEMENTATION	COMMENTARY
Recommendation #1: Purpose of the Act be expanded to facilitate democracy by increasing transparency and ensuring the public has access to information required to participate meaningfully in the democratic process.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #2: ATIPP Coordinator delegated authority for solely handling ATIPP requests for each public body.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #3: No officials other than the ATIPP Coordinator be involved in the request unless they are assisting in locating records or providing advice in connection with the matter.	Complete	
Recommendation #4: Anonymize identity and type of requestor, except if a personal request where identity is required to respond to request.	Complete	
Recommendation #5: Head of public body provide the ATIPP Coordinator with instructions in writing as to the duty to provide maximum level of assistance to the requester.	Complete	
Recommendation #6: <ul style="list-style-type: none"> • Remove \$5 application fee • Processing fees remain at \$25/hour • Can only charge for searching records (not for reviewing, severing, etc.) • First 15 hours free for public bodies; municipalities 10 free hours 	Complete	
Recommendation #7: The Office of the Information and Privacy Commissioner create guidelines for public bodies on how to process requests that take longer than the free amount of time provided.	Complete	
Recommendation #8: Create online application and payment process where feasible.	Substantially Complete	Online application launched June 1, 2015. Online payment process is currently being developed.
Recommendation #9: Section 13 (repetitive and incomprehensible requests) and s.43.1 (disregarding requests) be combined into one section	Complete upon Royal Assent	

IMPLEMENTATION TABLE FOR ATIPPA REVIEW COMMITTEE'S 90 RECOMMENDATIONS (2015)

RECOMMENDATIONS	IMPLEMENTATION	COMMENTARY
providing public bodies the ability to disregard requests with authorization from the Commissioner.	(June 1, 2015)	
<p>Recommendation #10: Public Interest Override: provides that discretionary exceptions available to a public body to refuse to disclose information to an applicant does not apply where it is "clearly demonstrated that the public interest in disclosure outweighs the reason for exception".</p> <p>Exceptions include: local body confidences, policy advice or recommendations, legal advice, confidential evaluations, disclosure harmful to intergovernmental relations or negotiations, disclosure harmful to the financial/economic interests of public body, disclosure harmful to conservation and disclosure harmful to public relations interests of a public body as employer.</p>	Complete upon Royal Assent (June 1, 2015)	
<p>Recommendation #11: The Office of the Information and Privacy Commissioner provide training for public bodies and develop a guidance manual on public interest test and how to be applied</p>	Substantially Complete	Guidance document complete and initial training complete. Additional training is anticipated.
<p>Recommendation #12: Removal of protection of briefing books for ministers assuming a new portfolio and for preparing for a sitting in the HOA.</p>	Complete upon Royal Assent (June 1, 2015)	
<p>Recommendation #13: Separate briefing books factual elements from policy advice.</p>	Complete	
<p>Recommendation #14: Protection of Cabinet Records concept maintained, except for factual and background sections of "a discussion paper, policy analysis, proposal, advice or briefing material prepared for the Cabinet"; also removes supporting/discontinued/removed categories of Cabinet Record.</p>	Complete upon Royal Assent (June 1, 2015)	
<p>Recommendation #15: With all other records that are not Cabinet Records, information in those records which reveals "substance of Cabinet deliberations" not to be disclosed.</p>	Complete upon Royal Assent (June 1, 2015)	
<p>Recommendation #16: Applicant who has been refused records on the</p>	Complete upon	

IMPLEMENTATION TABLE FOR ATIPPA REVIEW COMMITTEE'S 90 RECOMMENDATIONS (2015)

RECOMMENDATIONS	IMPLEMENTATION	COMMENTARY
basis of Cabinet confidences may appeal to either the Commissioner or Court.	Royal Assent (June 1, 2015)	
Recommendation #17: Clerk has discretion to disclose any Cabinet record where satisfied the public interest in disclosure of the record outweighs the reason for the exception.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #18: Retain current 20 year limit on release of Cabinet records	Complete upon Royal Assent (June 1, 2015)	
Recommendation #19: Consistent with Open Government policy, GNL proactively release as much Cabinet material as possible, particularly matters considered routine.	In Progress	Options are being developed for Cabinet consideration.
Recommendation #20: Incomplete formal research reports where a request or order for completion has been made within 65 business days of receiving the report can be withheld.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #21: Remove reference to discretion to refuse to disclose information that would reveal consultations or deliberations involving officers or employees of a public body, a minister or the staff of a minister.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #22: The revised Act contain a provision similar to existing section 21 respecting solicitor-client privilege.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #23: No restriction on the right of Commissioner to require production of solicitor-client privileged records and considered relevant to the investigation of a complaint.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #24: Solicitor-client privilege of the record produced to the Commissioner shall not be affected by disclosure to the Commissioner pursuant to the Act.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #25: An applicant can request the Commissioner to review GNL decision to refuse to release records on the basis of solicitor-client privilege.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #26: If the Commissioner recommends release of	Complete upon	

IMPLEMENTATION TABLE FOR ATIPPA REVIEW COMMITTEE'S 90 RECOMMENDATIONS (2015)

RECOMMENDATIONS	IMPLEMENTATION	COMMENTARY
solicitor-client privileged records the public body must, within 10 business days, either release the information or apply to a judge in the Trial Division for a declaration that the public body is not required, by law, to provide the record.	Royal Assent (June 1, 2015)	
Recommendation #27: Provisions requiring that the application to the Trial Division for a declaration be heard by use of the most expeditious summary procedures available in the Trial Division.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #28: Public bodies cannot impose any conditions on access to solicitor-client privileged records by the Commissioner, unless there is a reasonable basis for concern about the security of the records, in which case the public body can require the Commissioner to view the records at a site specified by the public body	Complete upon Royal Assent (June 1, 2015)	
Recommendation #29: Prohibit disclosure by a public body of information that is subject to solicitor-client privilege of a person that is not a public body.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #30: s.27 revert to the pre-Bill 29 three part harm test	Complete upon Royal Assent (June 1, 2015)	
Recommendation #31: s.28 wording revert to pre-Bill 29 requirement to notify if the public body intends to disclose information rather than if they are considering whether s.27 applies.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #32: All categories of records that the Act does not apply to will continue to not apply to ATIPPA.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #33: Add an additional category of information that ATIPPA does not apply to - a record relating to an investigation by the RNC in which suspicion of guilt of an identified person is expressed but no charge was ever laid, or relating to prosecutorial consideration of that investigation.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #34: The Commissioner cannot review the following records which fall outside the scope of the Act: Court records; records of a	Complete upon Royal Assent	

IMPLEMENTATION TABLE FOR ATIPPA REVIEW COMMITTEE'S 90 RECOMMENDATIONS (2015)

RECOMMENDATIONS	IMPLEMENTATION	COMMENTARY
person acting in a judicial or quasi-judicial capacity; prosecution records if all proceeding are incomplete; RNC investigation records where investigation is incomplete; and records relating to RNC confidential source of information.	(June 1, 2015)	
Recommendation #35: The Commissioner can review the following records which fall outside the scope of the Act: <ul style="list-style-type: none"> • Personal or constituency records of a member of the HOA • Records of a registered political party or caucus; • Personal or constituency record of a minister; • Question to be used on an examination or test; and • Materials placed in provincial or public body archives by or for a person, agency or organization other than a public body. 	Complete upon Royal Assent (June 1, 2015)	
Recommendation #36: The Commissioner be given additional authority to enter offices of a public body to access and review records that fall outside the scope of the Act listed under recommendation 35, but not records listed under recommendation 34.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #37: 6 legislative provisions that prevail over ATIPPA removed (subsections from the <i>Aquaculture Act and Regulations; Lobbyist Registration Act; Mining Act; Royalty Regulations, 2003; and Revenue Administration Act</i>).	Complete upon Royal Assent (June 1, 2015)	
Recommendation #38: All legislative provisions other than the 6 listed in recommendation 37 continue to prevail over the ATIPPA Act.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #39: List of legislative provisions that prevail over the ATIPPA Act be listed in a schedule to the Act rather than in the regulations.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #40: Add a provision requiring production records or right of entry relating to exceptions of disclosure claimed under a provision of another Act that prevails over ATIPPA.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #41: Add provision requiring that every 5-year review of the legislation include requirement to review legislative provisions that	Complete upon Royal Assent	

IMPLEMENTATION TABLE FOR ATIPPA REVIEW COMMITTEE'S 90 RECOMMENDATIONS (2015)

RECOMMENDATIONS	IMPLEMENTATION	COMMENTARY
prevail over ATIPPA.	(June 1, 2015)	
Recommendation #42: Add section allowing Lieutenant-Governor in Council (when the HOA is not in session) to add a legislative provision to the list of provisions that prevail over ATIPPA. However, this cannot continue in force beyond the end of the next sitting of the HOA.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #43: Removal of 4 circumstances under which the Lieutenant-Governor can make regulations: <ul style="list-style-type: none"> • Setting standards including time limits in fulfilling duty to assist applicants; • Establishing a schedule of public bodies subject to the Act; • Designating a provision of an Act or Regulation to prevail over ATIPPA; and • Defining "personal health information" 	Complete upon Royal Assent (June 1, 2015)	
Recommendation #44: <ul style="list-style-type: none"> • Consider placing a bill before HOA to amend s.5.4(1) of the <i>Energy Corporation Act</i>; and s.21 of the <i>Research and Development Council Act</i> to include the phrase "taking into account sound and fair business practices" immediately before the words "reasonably believes" in each of those sections. • More information relating to justification for s.8.1 of the <i>Evidence Act</i>; s.5(1) of the <i>Fish Inspection Act</i>; s.4 of the <i>Fisheries Act</i>; and s.13 of the <i>Statistics Agency Act</i> be provided to the next Review Committee for any of those provisions that still prevail over ATIPPA. 	Complete upon Royal Assent (June 1, 2015)	<i>Energy Corporation Act</i> and <i>Research and Development Council Act</i> amended as part of ATIPPA, 2015. The second recommendation relates to the next statutory review.
Recommendation #45: Require reasonable effort to notify third party of impending release of their personal information	Complete upon Royal Assent (June 1, 2015)	
Recommendation #46: OPE & FES-NL examine how information rights (access & privacy) can be protected during emergencies	In Progress	Research is underway to investigate how other jurisdictions protect privacy in emergency situations with an aim to developing

IMPLEMENTATION TABLE FOR ATIPPA REVIEW COMMITTEE'S 90 RECOMMENDATIONS (2015)

RECOMMENDATIONS	IMPLEMENTATION	COMMENTARY
		policies on this matter within the coming months.
Recommendation #47: Expand the method by which an individual can be informed of a public body's decision to release information for health or safety reasons	Complete upon Royal Assent (June 1, 2015)	
Recommendation #48: Report all privacy breaches to the Office of the Information and Privacy Commissioner, and notify affected individuals where there is risk of significant harm	Complete upon Royal Assent (June 1, 2015)	This recommendation was implemented for government departments in March 2015.
Recommendation #49: Include indemnity clause for MHAs acting in good faith on behalf of a constituent	Complete upon Royal Assent (June 1, 2015)	
Recommendation #50: Remove the firm provision allowing for the release of personal information 20 years after an individual's death; and impose a harms test.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #51: Return to the pre-Bill 29 requirement to release the "remuneration" of civil servants as opposed to "salary range" (with remuneration meaning salary and benefits)	Complete upon Royal Assent (June 1, 2015)	
Recommendation #52: Office of the Information and Privacy Commissioner to study continued use of social media by public bodies and make recommendations	Not Commenced	Work is expected to commence following an internal reorganization of the Office of the Information and Privacy Commissioner.
Recommendation #53: GNL consider labour standards legislation to protect personal information of employees held by employers	In Progress	Significant policy work is required to address this recommendation. The Labour Relations Agency is considering the matter.
Recommendation #54: The Office of the Information and Privacy Commissioner recommendation power maintained however de facto order power relating to public body refusal to disclose as GNL must either	Complete upon Royal Assent (June 1, 2015)	

IMPLEMENTATION TABLE FOR ATIPPA REVIEW COMMITTEE'S 90 RECOMMENDATIONS (2015)

RECOMMENDATIONS	IMPLEMENTATION	COMMENTARY
accept Office of the Information and Privacy Commissioner's recommendations or bring a Court application to confirm its decision. The Office of the Information and Privacy Commissioner has expanded powers with respect to Cabinet records, fee and timelines and consideration of frivolous and vexatious requests).		
Recommendation #55: Powers of the Office of the Information and Privacy Commissioner increased to reflect proposals discussed elsewhere in report	Complete upon Royal Assent (June 1, 2015)	
Recommendation #56: The Office of the Information and Privacy Commissioner adopt the changes in procedures and practices presently employed in the Commissioner's review process that are necessary to reflect comments of the Committee (i.e. timelines)	Complete	
<p>Recommendation #57:</p> <ul style="list-style-type: none"> • Timeline extensions must receive prior approval of the Office of the Information and Privacy Commissioner. Within 15 business days GNL must now apply to the Office of the Information and Privacy Commissioner to extend the timeline (20 business days). The Office of the Information and Privacy Commissioner has 3 days to respond to a request and may determine to extend "where necessary and reasonable". However there is no suspension of the 20 day timeline during the application to the Office of the Information and Privacy Commissioner for an extension. • Public bodies must receive prior Commissioner approval to disregard requests. Public bodies have 5 business days to file request with the Office of the Information and Privacy Commissioner to disregard request on the basis of frivolous and vexatious. 	Complete upon Royal Assent (June 1, 2015)	
Recommendation #58: Strengthen and clarify the advocacy role of the Commissioner respecting the prioritization of access/protection for requesters (conduct investigation on their own initiative and review compliance with act and regulations).	Complete upon Royal Assent (June 1, 2015)	
Recommendation #59: House of Assembly Appointment (and reappointment) procedure involving majority votes by all parties.	Complete upon Royal Assent	

IMPLEMENTATION TABLE FOR ATIPPA REVIEW COMMITTEE'S 90 RECOMMENDATIONS (2015)

RECOMMENDATIONS	IMPLEMENTATION	COMMENTARY
	(June 1, 2015)	
Recommendation #40: Timeline of appointment 6 years with one reappointment.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #41: The Information and Privacy Commissioner to have the status of a Deputy Minister.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #42: Commissioner be paid 75% of provincial court Judge salary and, apart from pension, additional benefits as provided to a DM.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #43: Commissioners who is not subject to public pensions act prior to appointment be paid contribution to RRSP equivalent to an amount under the public pension plan.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #44: In relation to access, the Commissioner has additional role of promoting and advocating efficient and timely responses to requested information	Complete upon Royal Assent (June 1, 2015)	
Recommendation #45: In relation to privacy, the Commissioner has additional role of: <ul style="list-style-type: none"> • reviewing and authorizing additional sources for collection of information; • ability to review privacy complaints made on behalf of an individual with their consent or if the Commissioner deems it appropriate; • ability to recommend that a public body destroy information or stop collecting, using or disclosing personal information. 	Complete upon Royal Assent (June 1, 2015)	
Recommendation #46: In relation to general role, the Commissioner can: <ul style="list-style-type: none"> • Have a banking system to deal with circumstances where an individual continues to file complaints while that person has more than 5 complaints outstanding; • Educate the public; • Engage in or commission research; • Auditing the practices of public bodies; 	Complete upon Royal Assent (June 1, 2015)	

IMPLEMENTATION TABLE FOR ATIPPA REVIEW COMMITTEE'S 90 RECOMMENDATIONS (2015)

RECOMMENDATIONS	IMPLEMENTATION	COMMENTARY
<ul style="list-style-type: none"> • GNL must consult Commissioner when introducing a new Bill to obtain advice on whether there are any implications for access or privacy; • Make special reports at any time on any matters affecting the operations of ATIPPA 		
<p>Recommendation #67: The Office Information and Privacy Commissioner annual report can include information relating to systematic and other issues raised by the Commissioner</p>	Complete upon Royal Assent (June 1, 2015)	
<p>Recommendation #68: The Office of the Information and Privacy Commissioner annual report contains a time analysis regarding their review and complaints.</p>	Not Commenced	All future annual reports to be completed in accordance with this recommendation.
<p>Recommendation #69: Committee recommends in relation to:</p> <ul style="list-style-type: none"> • Processing requests – public body respond to a request within 20 business day or longer if the Commissioner approves; • Making a complaint to the Commissioner – must be made within 15 business days of when public body notified applicant or third party of decision; the Commissioner must notify relevant parties or review within 10 business days; the Commissioner must complete informal review within 30 business days; the Commissioner must complete formal investigation with 65 business days of when request for review/complaint was received; Public body must decide whether to follow recommendations or go to Trial division within 10 business days of receiving recommendations; and • Appeals to the Trial Division – Such matters shall proceed through expedited trial. 	Complete upon Royal Assent (June 1, 2015)	
<p>Recommendation #70: Specifies sequence of actions and timelines relating to ATIPP requests, reviews by the Commissioner and appeals to the Trial Division.</p>	Complete upon Royal Assent (June 1, 2015)	
<p>Recommendation #71: MIGA, in consultation with OPE and the Office of the Information and Privacy Commissioner, to develop a standard for public disclosure.</p>	In Progress	The Municipal Working Group has developed a draft standard for

IMPLEMENTATION TABLE FOR ATIPPA REVIEW COMMITTEE'S 90 RECOMMENDATIONS (2015)

RECOMMENDATIONS	IMPLEMENTATION	COMMENTARY
<p>Recommendation #72: The standard referenced in recommendation 71 should be enacted in the <i>Municipalities Act, 1999</i>, and ATIPPA be amended to add that provision to the legislative provisions that prevail over ATIPPA.</p>	<p>In Progress</p>	<p>Government's consideration. As this standard requires changes to the <i>Municipalities Act, 1999</i> and potentially other Acts, careful policy work is required prior to bringing these Bills before the House of Assembly.</p>
<p>Recommendation #73: Definition of public body be expanded to include municipally owned and directed corporations.</p>	<p>Complete upon Royal Assent (June 1, 2015) Coming into effect on August 1, 2015.</p>	<p>ATIPPA, 2015 expands the definition of public body to include certain entities in the municipal sector created by or for municipalities. Unlike the remainder of the Act, this provision comes into effect on August 1 to provide municipalities with a chance to identify such entities and, with OPE advice, prepare them for their obligations under the Act.</p>
<p>Recommendation #74: OPE formalize and provide support to assist municipalities in conforming with ATIPPA including a:</p> <ul style="list-style-type: none"> • Help desk at the ATIPP Office; • Refresher courses offered through webinars or regional meetings; • ATIPPA guidance web pages on municipal council websites. 	<p>Substantially Complete</p>	<p>The help desk has been established and training provided to municipalities. The help desk and training will be ongoing. ATIPPA guidance web pages on municipal council websites are being developed.</p>
<p>Recommendation #75: Municipal access to information and protection of</p>	<p>In Progress</p>	<p>Draft complete and is being</p>

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privacy policies be developed in line with the suggestion in the Municipal Handbook 2014 and be published on municipal council websites.		reviewed by the Municipalities Working Group.
Recommendation #76: Urgent that thorough and adapted training be provided to municipal ATIPPA coordinator throughout the province and OPE consult with MIGA and the Office of the Information and Privacy Commissioner when updating training and resources.	In Progress	Introductory training has been provided to municipal ATIPPA Coordinators in April and May. The Municipal Working Group has developed training materials and has been considering how best to deliver them in light of the draft municipal standard (see commentary related to Recommendations 72 and 73)
Recommendation #77: Final version of the Office of Public Engagement's ATIPPA Municipalities Guide be completed as soon as possible in consultation with Municipal and Intergovernmental Affairs and the Office of the Information and Privacy Commissioner.	In Progress	This is subject to completion and approval of the draft public disclosure standard.
Recommendation #78: Removal of the requirement to publish in a newspaper an individual's right to request their information not be used for fundraising by post-secondary educational bodies	Complete upon Royal Assent (June 1, 2015)	
Recommendation #79: The Government take the necessary steps to impose a duty to document, and that the proper legislation to express that duty would be the <i>Management of Information Act</i> , not the ATIPPA	In Progress	A legislated Duty to Document would be a first for a Canadian government. Careful policy work and consultation is required before legislation is amended. This work is underway.

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<p>Recommendation #80: Implementation and operation of this new section of the <i>Management of Information Act</i> be subject to such monitoring or audit and report to the House of Assembly by the Information and Privacy Commissioner as the Commissioner considers appropriate.</p>	<p>Not Commenced</p>	<p>Action on this recommendation will follow implementation of Recommendation 79.</p>
<p>Recommendation #81: Adequate resources be provided to public bodies served by the Office of the Chief Information Officer, so that there is consistency in the performance of information management systems.</p>	<p>In Progress</p>	<p>An approach to this recommendation has been agreed upon. This will become part of the ongoing work plan of the OCIO IM Services Division through the Information Management Self-Assessment tool and outreach and advisory services to public bodies.</p>
<p>Recommendation #82: The ATIPPA be amended to modernize the definition of record, disclosure be no different than in paper form, datasets be made available in re-usable format and the applicant consulted on format</p>	<p>Complete upon Royal Assent (June 1, 2015)</p>	
<p>Recommendation #83: As a matter of good practice public bodies should work with applicants to help them better understand how to work with these datasets</p>	<p>In Progress</p>	<p>This will be pursued through the Open Government Action Plan</p>
<p>Recommendation #84: Revise section 69 of ATIPPA to give the Commissioner a leading role in overseeing the publication of information held by public bodies - responsible for creating a standard template for the publication of information and give each public body the obligation of adapting the template to its functions and publishing its own information and to monitor said publication</p>	<p>Complete upon Royal Assent (June 1, 2015)</p>	<p>The Committee suggested a phased implementation for this recommendation. The development of the template is anticipated to begin following the coming into force of ATIPPA, 2015.</p>
<p>Recommendation #85: A new regulation making power be added to the Act to enable Cabinet to prescribe which public bodies are required to</p>	<p>Complete upon Royal Assent</p>	

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RECOMMENDATIONS	IMPLEMENTATION	COMMENTARY
comply with section 69	(June 1, 2015)	
Recommendation #86: Change to workplace investigation stating that "all relevant information created or gathered for the purpose of a workplace investigation" be withheld rather than "information that would reveal the substance of records collected or made during a workplace investigation."	Complete upon Royal Assent (June 1, 2015)	
Recommendation #87: Where the head of a public body is in possession of records of a statutory office, section 30.1 of the Act should apply and recommends that section 30.1 be so amended.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #88: Amend section 72 of the Act to include an offence provision that reflects the Commissioner's recommendation.	Complete upon Royal Assent (June 1, 2015)	
Recommendation #89: The next five-year statutory review of the Act be expressly mandated to assess the time limits for provisions that have specific protection periods.	Not Commenced	This recommendation relates to the next statutory review.
Recommendation #90: The Committee's draft bill be presented to the House of Assembly for consideration and that: <ul style="list-style-type: none"> • The Commissioner be consulted on the draft bill; • A phased approach to implementing the provisions; and • Where the House of Assembly enacts any of the Committee's recommendations, the Minister of OPE report to the House of Assembly within one year of such enactment, on the progress of its implementations. 	Substantially Complete	Completed with the exception of the report to the House of Assembly within one year of enacting ATIPPA, 2015.