



## Privacy in a Pandemic

Privacy laws recognize the need for appropriate information sharing in a pandemic or emergency situation.

It is important that public bodies, health custodians and private sector organizations know how personal or health information may be shared during a pandemic or emergency situation.

### The Law

The Northwest Territories has two privacy laws:

*Access to Information and Protection of Privacy Act* which applies to the public sector  
*Health Information Act* for the health sector

In addition, private sector organizations are governed by the *Personal Information Protection and Electronic Documents Act* (PIPEDA), which sets out rules for the collection, use and disclosure of personal information by businesses and other organizations in the course of commercial activities.

These Acts govern the collection, use and disclosure of personal information. Each of them contain provisions to allow for the sharing information, including personal information, as necessary in the public interest in the event of an emergency.

All of these Acts require that any collection, use or disclosure of personal information or health information be **limited** to that which is **needed** to achieve the **reasonable** purpose of the collection, use or disclosure.

### ***Access to Information and Protection of Privacy Act (ATIPP Act)***

The ATIPP Act applies to “public bodies”, which include Territorial government ministries and agencies, such as, but not limited to, the Northwest Territories Housing Corporation and Aurora College.

Public bodies may disclose personal information under the ATIPP Act in emergency situations with the consent of the individual, or without consent in certain circumstances, including:

- if the disclosure is authorized by an enactment of the Northwest Territories or Canada (section 48(1)(p));
- when necessary to protect the mental or physical health or safety of any individual (section 48(1)(q));
- for any purpose when, in the opinion of the head of the public body, the public interest in disclosure outweighs any invasion of privacy that could result from the disclosure (section 48(1)(s)(l));
- for any purpose in accordance with any Act that authorizes or requires the disclosure (section 48(1)(u)).

### ***Health Information Act (HIA)***

The HIA applies to health information in the custody or control of health information custodians. Custodians include The Department of Health and Social Services, the Northwest Territories Health and Social Services Authority, the Hay River Health and Social Services Authority, the Tlicho Health and Social Services Authority, private sector physicians, and pharmacists. The HIA authorizes custodians to collect and use health information for the purposes of providing health services.

The HIA allows custodians to disclose (Part 4) health information with the consent of the individual, or without consent in specific circumstances, including:

- if the custodian has reasonable grounds to believe that the disclosure is required to prevent or reduce a an imminent threat or a risk of serious harm to the health of the individual or another individual (section 58(1)(a) and (b))
- to a public health authority established under an Act, or under the legislation of Canada, a province or another territory, if the disclosure is required for a public health purpose. (section 66)

## **Public Health Emergency**

Privacy legislation does not impede the work of public health officials in the case of a pandemic or other health emergency.

The Chief Public Health Officer has broad powers to collect, use and disclose personal health information to protect the public health, whether or not a formal health emergency is declared. Section 35(2) of the *Public Health Act* does, however, limit the collection to the quantity and type of personal health information necessary for the purpose for which it is collected and the Chief Public Health Offices must protect the confidentiality of that information by making security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.

Orders issued under public health legislation could require the collection, use and disclosure of certain personal information relating to employees, patients and customers.

If you need to collect, use or disclose employee personal information in an emergency, you should communicate to your employees, patients and customers the specific legislative authority that is engaged to do so.

## **Acknowledgments**

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For more information, please refer to the following resources:

*Access to Information and Protection of Privacy Act*

<https://atipp-nt.ca/wp-content/uploads/2016/03/Access-to-Information-and-Protection-of-Privacy-Act.pdf>

*Health Information Act* <https://atipp-nt.ca/wp-content/uploads/2016/03/Health-Information-Act.pdf>

*Public Health Act*

<https://www.canlii.org/en/nt/laws/stat/snw-2007-c-17/latest/snw-2007-c-17.html?resultIndex=1>

*Personal Information Protection and Electronic Documents Act*

<https://www.canlii.org/en/ca/laws/stat/sc-2000-c-5/latest/sc-2000-c-5.html?autocompleteStr=Personal%20I&autocompletePos=1>