

Key Differences between the ATIA and the FOIP Act

The new *Access to Information Act* (ATIA) has incorporated new and revised provisions of the *Freedom of Information and Protection of Privacy Act*, aimed at enhancing clarity, strengthening regulatory accountability, and implementing administrative updates. Key differences between the two acts include:

Electronic Records

A definition for “electronic records” has been added to the ATIA.

- An electronic record refers to a record that exists at the time a request for access is made or that is routinely generated by a public body that can be any combination of texts, graphics, data, audio, pictorial or other information represented in a digital form that is created, maintained, archived, retrieved or distributed by a computer system.

Political Staff

The ATIA has made it clear that political records are excluded from the scope of the Act.

- The ATIA does not apply to a record of communication between a member of Executive Council and political staff, as defined in the regulations, or between political staff, that does not involve any other employee of a public body.

Defining “Day” as “Business Day”

Under the ATIA, a “day” is defined as a “business day”.

- Business day means a day other than a Saturday, a holiday, or a day when Government of Alberta offices are closed as part of the Government of Alberta’s Christmas closure.

Duty to Assist

The related provisions have been revised to provide clarity to public bodies on their responsibility to assist an applicant when it comes to creating a record from an electronic record and the records may not exist in the form requested.

- The head of a public body must, subject to the exceptions set out in this Act, provide an applicant access to a record if providing the record can be done using the public body’s normal computer hardware and software and technical expertise, would not unreasonably interfere with the operations of the public body, and would be reasonable and practical.

See Fact Sheet on Duty to Assist for more information.

Time Extensions

The related provisions have been updated to allow time extensions

- when public bodies and applicants agree on timelines for completing a request, and
- when a public body is unable to operate in response to emergency or disaster situation (for example, during a wildfire).

See Fact Sheet on Time extensions for more information.

Records available without an access to information request

The ATIA provides further clarity on records available without a request.

- The ATIA has made it clear that public bodies can proactively disclose information outside of the formal access request process, subject to certain conditions such as ensuring records do not contain personal information.

See Fact Sheet on Records available without an access to information request for more information.

Requests by Public Bodies

Under the ATIA, a public body may not make a request to another public body to obtain access to a record.

- As there are existing avenues for information sharing between public bodies, this new provision is intended to ensure that resources are not being allocated inappropriately and ensure no misuse of the access to information process.

Court Records, Prosecution Records and Records Subject to Federal Public Sector Legislation

The ATIA has provided clarity that court records, including court-specific applications and databases, prosecution records, including charging recommendations, and records subject to federal public sector legislation are exempt from the application of the Act.

Cabinet Confidences and Legal Privilege

The ATIA has further clarified the exceptions related to Cabinet confidences and legal privilege to ensure consistent application.

- Expanded provision around the disclosure of Cabinet records to include information that would reveal the subject of deliberations, including advice, recommendations, policy considerations or draft legislation submitted to Executive Council, any of its committees or Treasury Board.
- Solicitor-Client privilege was clarified to be clear that the head of a public body may refuse to disclose a record subject to any type of legal privilege.
- The Act also clarifies that the Commissioner cannot compel records subject to legal privilege or cabinet records. An attestation process for Cabinet confidence has been established to help the Commissioner to confirm that the exception was correctly applied.

Advice to Officials

Advice to officials has been clarified to include that the head of the public body may refuse to disclose records that could reasonably be expected to reveal advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council, including background factual information and information provided for informational purposes only.

Workplace Investigations

A new exception has been added under the ATIA to clarify that records related to workplace investigations may not be disclosed if the head of the public body expects it could interfere or cause harm.

See Fact Sheet on Workplace Investigations.

Procedural Updates related to the OIPC

The ATIA reduces administrative burden for the OIPC by:

- allowing the OIPC to make orders without an investigation,
- requiring a person to first attempt to resolve their complaint with the public body before the Commissioner, and
- giving the OIPC discretion to not pursue an inquiry if it does not make sense to do so.

The ATIA also introduces clear timelines for the OIPC to complete reviews and inquiries.

- Specific timelines have been added for the OIPC to complete reviews and inquiries. The Commissioner must complete an inquiry within 180 business days after receiving a request.

