

# **Consultation Questions**

## **Designation of Public Bodies under the *Access to Information and Protection of Privacy Act***

*May 2011*

# Consultation Questions

## Topic One:

The report sets out criteria that could be used to identify organizations as public bodies and to list them in the ATIPP regulations or to delete them from the regulations if they no longer meet the criteria. This will result in more certainty, as the criteria will help to determine what organizations should be covered by ATIPP. It will also expand the scope of the Act over time, as the criteria are applied to various organizations to see whether or not they should be listed in the ATIPP regulations.

Proposed criteria for inclusion:

1. The body is created by a Yukon Act or regulation,
2. The body has decision-making authority, and
3. The body meets a series of tests that show it has a continuing relationship with the Yukon government (YG).

The tests include:

- the government appoints the majority of members,
- the body is responsible to the government through reporting to a Minister or the Legislature,
- the government provides ongoing direction to the body on how to carry out its mandated activities or on its decisions, and
- decisions made by the body must be confirmed by the government.

## Questions Related to Topic One:

- 1. Should only decision-making organizations be included by regulation, or should those that make recommendations to YG be included as well? What is your view and why?**

This depends on the relationship that the organization has with Government. If the relationship is arms-length then it is reasonable to exclude them. Otherwise their inclusion would be beyond the intended purpose of the ATIPP Act.

2. **The discussion paper describes the differences between organizations created in law and those created in policy. The key difference is that bodies created in policy do not have the authority to make decisions about individuals.**

**Should only organizations created in law be included, or should bodies created by policy be included as well? What is your view on this and why?**

Bodies or organizations that are not directly under Government direction and supervision are excluded by the proposed criteria and that is a reasonable approach.

3. **The third criterion requires that an organization meet a number of tests in order to be included under the regulation. The intent is that, if all these tests are met, the organization should be covered under the ATIPP regulations.**

- Do you think the organization should have to meet all of these tests, or just some of them?

It is reasonable that organizations must meet the comprehensive set of tests (all) along with the other criteria in order to be included under the regulations.

- If all, why do you think that? If just some, why do you think that?

If all tests are not required to be met, this may result in inclusions not intended.

- Do you think the tests are reasonable to show a connection between an organization and the government?

Yes - see above

- Can you think of other tests that should be included to show such a connection?

No

4. Do you feel that the criteria for inclusion as described in Questions 1 through 3 are reasonable? Yes  No

If no, please suggest others that may be more appropriate.

N/A

5. **The law provides for the protection of privacy by setting out rules for how personal information is to be collected, used and disclosed by public bodies. However, some people may feel that protection of personal privacy should be strengthened by creating additional criteria to cover off how personal information is dealt with by public bodies.**

**Do you think specific criteria to deal with personal information should be created, or do you think it is covered off adequately already? If additional criteria should be created to further protect personal information, do you have any suggestions about what the criteria should address?**

From the perspective of our organization (Association of Yukon School Councils, Boards and Committees), there is no need to strengthen this process. The Act balances the need to protect personal information with protection of third parties and it has sufficient exemptions to the release of public information.

6. **The criteria allow for Cabinet discretion in determining whether or not to add an organization to the regulations. Do you think this is a reasonable approach? Why or why not?**

The criteria and tests are sufficiently rigorous therefore Cabinet discretion is not required. Otherwise, there is a potential for arbitrary inclusion or exclusion.

## **Topic Two:**

The report identifies criteria that could be used to delete public bodies from the ATIPP regulations to ensure the list is always current.

Proposed Criteria for Deletion:

1. The body no longer exists or has been amalgamated with another public body;
2. The body no longer meets the criteria set out above due to major changes in its function or structure; or
3. The body is replaced or superseded by a new Yukon Act or regulation that has equivalent provisions for access to information and protection of privacy.

### **Questions Related to Topic Two:**

7. **The intent is to delete public bodies from the ATIPP regulation if they no longer exist or become part of another entity. Do you consider this a reasonable approach? Please explain.**

It is prudent and reasonable to allow for the removal of bodies that no longer meet the criteria or the tests.

- 8. The function or structure of public bodies may change over time to the extent that they no longer meet the proposed criteria for inclusion. If this is the case, do you think such a public body should be removed from the ATIPP regulations? Why or why not?**

Yes, the answer is the same as to the previous question.

The only caveat is that the legacy information should be subject to any previously applicable rules.

- 9. Public bodies are created under Yukon Acts and regulations. Changes to those Acts and regulations may override the *ATIPP Act*. For example, a Yukon law could be changed so that it covers off access to information and protection of privacy issues. A Yukon law could also be changed so that the role of public bodies created under that law changes as well.**

**When this happens, do you think the public body should be removed from the ATIPP regulation? Why or why not?**

See caveat in the answer to question 8 regarding legacy information.

## **Topic Three:**

**When we looked at how the criteria might apply to various bodies, it became apparent that some bodies would not be covered under the ATIPP regulations.**

This list includes the following:

- Umbrella Final Agreement board or committee
- Body created under federal legislation or international agreement
- Body created under territorial legislation paramount to ATIPP
- Non-Government Organizations delivering a government service
- Private sector organizations

### **Question Related to Topic Three:**

**10. Do you think this list is acceptable? Why or why not?**

Yes, the list is appears reasonable.