



2017 ANNUAL REPORT

Working hard for Yukoners



Yukon
Ombudsman



Yukon
Information
and Privacy
Commissioner



Yukon
Public Interest
Disclosure
Commissioner



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All services of the Office of the Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner are free and confidential.

We welcome your feedback on our annual report, including the method of delivery.



Diane McLeod-McKay
**Ombudsman, Information
& Privacy Commissioner,
and Public Interest
Disclosure Commissioner
for Yukon**



I begin my 2017 Annual Report by acknowledging the members of the Yukon Legislative Assembly (MLAs) who voted in favour of reappointing me for an additional term as Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner for Yukon. I am pleased and honoured to be given the opportunity to continue my work for another five years.

I am passionate about this work, in particular the protection of the civil and democratic rights afforded to Yukoners under the access to information and privacy legislation in the territory. The need to be diligent in preserving privacy protection is paramount. This is especially important due to the ubiquitous use of digital technology to process information by governments, other public bodies, and the health sector, along with the risks of harm to individuals as a result of improper collection, use and disclosure of information, as well as privacy breaches. Accessing information may also prove more challenging due to an increase in use of mobile devices that store information which may prove inaccessible. Over the next five years, a number of changes will occur that could significantly impact Yukoners' rights under these laws as the territory, along with other jurisdictions, moves toward a more digitally-based service delivery and economic model. I want to reassure Yukoners that I will be working diligently to preserve these rights.

I will also work diligently to improve fairness in program and service delivery by Yukon government and other public authorities by developing tools to help these bodies self-evaluate fairness. To protect the public from wrongdoings, I will work toward improving awareness about the *Public Interest Disclosure of Wrongdoing Act* (PIDWA) so that public entities recognize disclosures and manage them accordingly, and to ensure public servants have a clearer understanding about when they are making a disclosure and about how they are protected from reprisal.

My next term will begin in June of 2018 and will last until June of 2023. As part of the reappointment process, I highlighted for MLAs the challenges I faced as I took on the role of Yukon's first full-time Ombudsman, and Information and Privacy Commissioner, and as the first Public Interest Disclosure Commissioner. The focus of my last term was to address these challenges:

- improve privacy management under the *Access to Information and Protection of Privacy Act* (ATIPP Act)
- support the development and implementation of the *Public Interest Disclosure of Wrongdoing Act* (PIDWA) and *Health Information Privacy and Management Act* (HIPMA) as well as the review of the ATIPP Act
- design a monitoring strategy under the ATIPP Act and HIPMA to support compliance
- develop and improve my office's procedures for meeting our expanded mandates and build a team sufficiently skilled to deliver on these mandates
- raise public awareness about our mandates and our work.

These challenges were significant but I am pleased to say that after five years, my team and I have made significant headway toward addressing them.

I also highlighted for MLAs that despite the good work done by my team and I during my first five-year term, there is more we can do to support the

work underway and meet the new challenges ahead. To do so, I provided my goals for the next five-year term:

- establish an oversight office sufficiently skilled to address new challenges presented by innovations in the public and health sectors and to deliver on our multiple mandates
- continue to support the development of effective privacy management programs in public and health care bodies so that they are in place and operational by 2023
- improve access to information by supporting the Government of Yukon in its efforts to provide access to information outside the ATIPP Act process and by ensuring those responsible for managing access to information in public bodies are better trained to manage requests made under the ATIPP Act
- assist public bodies to implement amendments made to the ATIPP Act following its review
- enhance fairness in public service delivery through the development and implementation of fairness self-evaluation tools
- work with the Government of Yukon, public service agencies, public servants and their unions to better understand what a disclosure under PIDWA is, along with the protections PIDWA affords to public servants against reprisals concerning disclosures
- deliver on my outreach strategy, which is designed to increase awareness amongst the public and health sectors of the mandates of my office and to inform the public about their rights under the mandates and how to exercise them.

In addition, a comprehensive review of HIPMA must be initiated by the Government of Yukon before August 31, 2020. This is just two years away. Added to my goals for the next term will be to participate in this review and, if revisions are made before the end of my term, to assist custodians in implementing the revisions and in developing processes for effective oversight.

I will report on my office's achievements in meeting these goals beginning in my annual report for 2018.

For this 2017 Annual Report, I have chosen a different format from previous years. This year I have elected to combine all three reports into one document, with sections for each of the three roles. For each role, I have included "A Year in Review" remarks, along with stories about some of our work and statistical reporting to demonstrate accountability.

I hope you find the information in this annual report informative and useful.

Kind regards,



Diane McLeod-McKay, B.A., J.D.,
Yukon Ombudsman, Information and Privacy Commissioner, and Public
Interest Disclosure Commissioner



Yukon
Ombudsman



and Private
Commissi

2017 ANNUAL REPORT OF THE YUKON OMBUDSMAN



Yukon
Public Infor
Disclosure
Commissi

Suite 201,
211 Hawkins Street

The Honourable Nils Clarke
Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:

As required by section 31 of the *Ombudsman Act*, I am pleased to submit the Annual Report of the Ombudsman for the calendar year 2017.

I am also pleased to share this with the Yukon public.

Kind regards,

Diane McLeod-McKay,
Yukon Ombudsman

A YEAR IN REVIEW

In 2017, complaints to the Yukon Ombudsman increased significantly. We received double the amount of complaints as compared with 2016. We determined, however, that for a number of them we did not have jurisdiction to investigate them and closed the files shortly thereafter. Of the complaints we did investigate, we were able to help individuals resolve their complaints. For example, in one case a complainant was having trouble receiving a response to inquiries about a loan from a housing program run by an authority. Once we became involved, the authority promptly responded and addressed the complainant's issue. Another was about the changes made to the application process for the public utility grant. In this case, a complainant was concerned there was unfairness in the modified application process. We investigated the complaint and found no unfairness.

See the *Stories About Our Work* section of this annual report to learn more about our investigation of these complaints.

We also received a number of complaints about the Workers' Compensation Appeal Tribunal. These complainants were unsatisfied with the decisions made by the tribunal about claims for workplace injuries. In all these cases, we had to clarify for the complainants that our office is not another level of appeal. Our role is to determine if the hearing process was fair and the decision was reasonable. Fair process requires that 1) the person affected is made aware of the decision to be made; 2) the person affected is given an opportunity to provide information and challenge the information in the tribunal's hands; and 3) the decision demonstrates that all the facts and issues were considered and provides an explanation about why that particular decision was reached. We were satisfied that in each of these cases, the hearing process was fair and the decision reasonable.

A Need for Expanded Authority

The *Ombudsman Act* in Yukon does not authorize the Ombudsman to initiate an investigation on her own. All other jurisdictions in Canada with a parliamentary Ombudsman include this authority in their legislation. This past year, a number of news stories came to the attention of our office that, in our view, warranted an Ombudsman investigation, but because the Ombudsman has no authority to launch an investigation or even to make comments about these issues, they were never examined. The Ombudsman's authority under Yukon's *Ombudsman Act* is limited to investigating a complaint received from an individual who was personally aggrieved by an authority in respect of a matter of administration. Given



this, I have included in my goals for my next term to begin discussions with the Yukon Legislative Assembly Speaker, who is responsible for the *Ombudsman Act*, about reviewing the act to bring it in line with the rest of Canada. The *Ombudsman Act* does not have a provision requiring its review.

Proactive fairness assessment tool project

Our office is leading a national initiative to develop a fairness assessment tool which, once completed, we will introduce to authorities for their use. The purpose of the tool is to allow an authority to develop, evaluate and improve fair practices in the delivery of public services. We are very pleased that a number of Ombudsman offices across Canada agreed to work with us on this initiative.

Raising awareness of the work of the Ombudsman

In 2017, my team and I developed a comprehensive outreach strategy designed to increase awareness about the work of my office. As part of this work, we developed some goals to help the public become more aware of the Ombudsman's work. Over the next five years, we will be working toward meeting these goals. They are to:

- be more visible in the community
- increase understanding of the Ombudsman's role, work, and value
- make the Ombudsman's work more meaningful, personal, and relevant to citizens
- encourage people to come to the office with issues.

We also plan to strengthen our relationships with authorities and help them better understand the nature of our work.

In the spirit of raising awareness about the work of the Ombudsman, I've included information in this annual report to that end.

Information about the role of the Ombudsman and the complaint process

What does the Ombudsman do?

Our office can investigate a complaint made by anyone who believes they were treated unfairly by an authority (defined below) in its implementation of programs and policy.

The Ombudsman's Office is considered an office of last resort. This means that before making a complaint to the Ombudsman, you must first try to resolve your complaint with the relevant authority, and exhaust any right of appeal or objection, or any right to apply for a review to a court or statutory tribunal.

It is important to know that the Ombudsman does not advocate for the complainant or authority when conducting an investigation. The Ombudsman's job is to determine if the authority acted unfairly and, if so, to recommend a remedy to prevent further unfairness. Sometimes the remedy will benefit the complainant and sometimes it will not. That depends on the complaint and the ability of the authority to right the unfairness.

Who can the Ombudsman investigate?

The Ombudsman can investigate 'authorities' in Yukon, which are:

- Yukon government departments
- a person, corporation, commission, board, bureau or authority whose board members (or a majority of them) were appointed by an Act, Minister, or Commissioner in Executive Council, and who are public officers or public servants in Yukon or are responsible to the Yukon government
- public schools
- Yukon College
- hospitals

- professional and occupational governing bodies
- municipalities (at their request only)
- Yukon First Nations (at their request only).

The Ombudsman has no authority to investigate:

- disputes between individuals
- the federal government
- the RCMP
- landlord/tenant matters
- home or auto insurance
- banks
- businesses
- the courts, Yukon Legislative Assembly, Yukon Elections Office, or lawyers acting on behalf of government.

What happens when I make a complaint?

The Ombudsman is independent from government. This independence is very important as it ensures investigations conducted by the Ombudsman are objective and neutral. The Ombudsman's role is to conduct an impartial assessment about whether a situation has been dealt with in an administratively fair manner.

Upon receiving a complaint, the Office of the Ombudsman will try to work with the authority in question to address the complaint. If the complaint cannot be addressed informally, the Ombudsman may choose to conduct a full investigation. Once the investigation is complete, the Ombudsman will generally prepare a report containing the findings about unfairness and any recommendations made to remedy unfairness. The complainant does

not receive the full report, but is provided with written information about the investigation, the findings, and any recommendations.

When will an authority be found to have acted unfairly?

Under the *Ombudsman Act*, an authority will be found to have acted unfairly in the following circumstances:

- If the authority's decision, recommendation, act or omission related to the complaint was:
 - contrary to law
 - unjust, oppressive, or improperly discriminatory
 - made, done, or omitted pursuant to a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory
 - based in whole or in part on a mistake of law or fact or on irrelevant grounds or consideration
 - related to the application of arbitrary, unreasonable, or unfair procedures



- otherwise wrong.
- If in doing or omitting an act, or in making or acting on a decision or recommendation, the authority:
 - did so for an improper purpose



- failed to give adequate and appropriate reasons in relation to the nature of the matter
- was negligent or acted improperly
- caused unreasonable delay.

These are legal standards, which means there is a bar that must be reached before a finding of unfairness will be made. Sometimes the actions of an authority may appear to be unfair to the complainant, but during the investigation, the investigator may determine the authority's actions do not amount to an unfairness according to the above standards. This is sometimes confusing for complainants.

How can I learn more?

If you want to learn more about what the Ombudsman's Office does, visit www.ombudsman.yk.ca. If you believe you were treated unfairly by an authority, contact the Ombudsman. See the Table of Contents page for our contact information.

STORIES ABOUT OUR WORK

▶ Understanding our limits

JEAN COMPLAINED TO THE OMBUDSMAN ABOUT A DECISION OF THE YUKON WORKERS' COMPENSATION APPEAL TRIBUNAL. SHE FELT A TRIBUNAL DECISION THAT SHE WAS NOT ENTITLED TO COMPENSATION UNDER THE *WORKERS' COMPENSATION ACT* WAS UNFAIR. THE OMBUDSMAN FOUND NO UNFAIRNESS, BUT NOT FOR THE REASONS YOU MIGHT THINK.

Jean's complaint was related to a workplace accident. She said the accident had caused a loss of hearing, which meant she was unable to continue working. So she had applied for compensation as an injured worker. The Hearing Officer at the Yukon Workers' Compensation Health and Safety Board decided that her hearing problem was not related to the workplace injury, and Jean then took her case to the tribunal. She was disappointed when the tribunal agreed with the earlier decision that she was not eligible for workers' compensation. It decided that genetics and age had caused Jean's physical problems, not the accident. Jean felt this was unfair and brought her case to the Ombudsman.

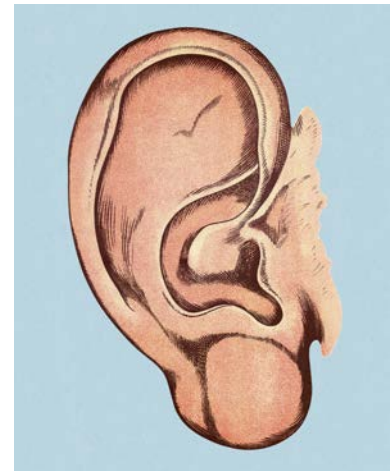
Our office reviewed the tribunal decision, the relevant legislation and policies that the decision referred to, and the information that Jean provided us. At that point, we decided to stop investigating Jean's complaint. This was not necessarily because we agreed with the tribunal decision. That's not what we consider in a case like this. Instead, we look at whether a complainant was treated fairly during the hearing process. To make that determination, we look into questions such as:

- Was the affected person aware of the decision to be made?
- Was that person given the opportunity to provide information and challenge information that the tribunal had?
- Did the tribunal consider all the relevant information and did the

decision show that the tribunal had done this?

- Did the decision include an explanation?
- Was the decision reasonable, based on the evidence?

The Ombudsman is not another level of appeal. We do not substitute our opinion for an opinion of a tribunal. Even if we might have a different opinion about how the evidence should be assessed, that is not enough to render the tribunal's decision unreasonable or unfair.



The Office of the Ombudsman has received a number of complaints, over time, relating to decisions of tribunals. It's important to understand that our ability to review tribunal decisions is limited to a consideration of whether the tribunal hearing was procedurally fair. We are not able to re-make the decision.

▶ Summertime... and the living is not always easy

ELEANOR RECEIVES FINANCIAL ASSISTANCE EVERY MONTH FROM THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES TO HELP WITH COSTS FOR RENT, AS WELL AS HEATING FUEL AND UTILITIES. THE AMOUNT FOR HEATING FUEL AND UTILITIES VARIES WITH THE TIME OF YEAR, AND IS LOWER DURING THE SUMMER MONTHS. ELEANOR THOUGHT THIS WAS UNFAIR, SINCE HER RENT, WHICH INCLUDED UTILITIES AND HEATING FUEL, REMAINS THE

SAME ALL YEAR ROUND. SHE BROUGHT HER COMPLAINT TO THE OFFICE OF THE OMBUDSMAN. OUR OFFICE WAS ABLE TO RESOLVE THE MATTER QUICKLY THROUGH OUR INFORMAL RESOLUTION PROCESS BUT NOT WITH THE RESULT ELEANOR WAS HOPING FOR.

We took a look at the information available, which included reviewing the *Social Assistance Act*, regulations and schedules; talking with the Director of the Income Support Unit in the Department of Health and Social Services; and reviewing the documents from Eleanor and the Income Support Unit.

We determined that the unit had no discretion to increase the amount Eleanor was receiving any further. The amounts are set out in a regulation and she was already receiving the maximum allowable amount.

Even though the monthly financial assistance did not align perfectly with Eleanor’s exact rental expense needs, we found no unfairness. The department followed the law and made no errors.

A matter of manners

COURTESY MAY NOT BE THE FIRST THING THAT COMES TO MIND WHEN THINKING OF FAIRNESS, BUT IN FACT, IT IS AN IMPORTANT ELEMENT. THE OFFICE OF THE OMBUDSMAN RECEIVES COMPLAINTS PERIODICALLY THAT ARE TRIGGERED BY SOMEONE FEELING THAT THEY HAVE BEEN TREATED RUDELY.

This aspect of fairness is called “relational fairness”. A feeling of being treated discourteously cannot always be measured against any legal or objective standard, but it may still be at the core of a complaint. This type of complaint is rooted in a breakdown or lack of good communication between the decision-maker and the person affected.

Decision-makers need to:

- Listen and fully hear people out. [This may mean being willing to include additional information in a decision to show that people were listened to and to demonstrate how their information was handled.]
- Be approachable and friendly to people accessing services.
- Maintain confidentiality. Confidentiality is often a legal requirement but it is also a way to show respect.
- Be clear, direct and honest throughout the process. Be careful not to mislead people about what the decision-maker can and cannot do.
- Be willing to apologize, if a mistake is made. This can often diminish conflict.

Decision-makers must think about relational fairness as an important part of their job, especially in their dealings with the public.

▶ Lending a hand to sort out a loan

BILLIE WAS HAVING A PROBLEM WITH THE YUKON HOUSING CORPORATION HOME REPAIR PROGRAM. SHE HAD TAKEN OUT A HOME REPAIR LOAN A FEW YEARS BACK AND SHE BELIEVED THE LOAN WAS NOW FULLY REPAID. SHE HAD BEEN TRYING TO OBTAIN INFORMATION ABOUT HER LOAN FROM THE HOUSING CORPORATION FOR MORE THAN TWO YEARS AND HAD RECEIVED VIRTUALLY NO INFORMATION. THAT’S WHEN SHE DECIDED TO BRING THE MATTER TO THE OFFICE OF THE OMBUDSMAN.

When Billie first took out the loan, she knew that the repayment amounts were based on annual income. Because her annual income went up and down from year to year, the size of her required payments did as well, and over time she began to lose track of how much of the loan she had paid off. That said, she believed the loan would be fully repaid in December 2015 and she stopped making any more payments at that point. She also



approached the housing corporation to obtain a full accounting of her payments. This is when things became difficult.

Billie phoned and emailed the loans officer who was handling her file and the officer’s supervisor. She contacted them repeatedly over a 24-month period. The housing corporation made many promises to provide the information, often saying that something would happen “next week”.

Once Billie brought her complaint to us, we were able to deal quickly with this issue, with only a few phone calls and emails. The housing corporation agreed to work with Billie promptly to provide the full accounting of her payments and to give Billie a full explanation. And, it delivered on this promise. Even though Billie learned that she still owed money on the loan, she was grateful and said in an

email to our office: “At least it is over and we know where we stand.”

The Office of the Ombudsman has an informal resolution team that works to find a quick and satisfactory conclusion to complaints, whenever possible. This works most effectively when the department responds quickly to our inquiries, recognizes the problem and addresses it, as the housing corporation did when we looked into Billie’s complaint.

Sometimes the onus is on you

JIM WAS WORKING ON HIS APPLICATION FOR THE 2015 PIONEER UTILITY GRANT. HE HAD RECEIVED THE GRANT FOR 2014 AND HAD PICKED UP AN APPLICATION FORM FOR 2015 IN DECEMBER OF THAT YEAR. ALL SEEMED WELL, UNTIL SOMETIME EARLY IN 2016, WHEN HE TOOK A CLOSER LOOK AT THE APPLICATION FORM. HE SAW THAT BECAUSE OF CHANGES TO THE PROGRAM, DIFFERENT INFORMATION WAS REQUIRED FOR THE APPLICATION. MOST IMPORTANTLY, HE SAW THAT THE DEADLINE FOR SUBMITTING AN APPLICATION HAD CHANGED AND HAD ALREADY PASSED.



This caught Jim off guard. He had spoken with staff in the government's Income Support Unit in December when picking up the application, and no one had mentioned the new deadline or requirements. The situation was further complicated because he was trying to complete the application from outside the territory and couldn't easily access some of the documentation that was now required. He was finally able to deliver his application via fax in late February, followed several weeks later by the original copies in the mail. But it was all to no avail. Jim received a letter denying his application, because it had arrived so late. He thought this was unfair and brought a complaint to the

Office of the Ombudsman to see if we could help.

Our office reviewed the relevant legislation, the information made available to the public about changes to the program and deadlines, and the information provided by Jim. We concluded that Jim's complaint of unfairness was not substantiated. We accepted his statement that he had not received an information package which the Income Support Unit said it mailed to him (and all other 2014 recipients). We also accepted his statement that staff at the Income Support Unit had failed to advise him of the deadline change at the time he picked up the application. However, this information

was available to Jim in a number of other ways, including the application form itself, newspaper ads, and the Health and Social Services website. In addition, the legislation required applications to be submitted by the end of each year (December 31st) and the unit did not have the discretion to accept an application after the legislated deadline.

While it is expected that program staff provide as much information as possible about program changes, there is also an onus on individuals to take reasonable steps to ensure they understand the requirements for receiving a service or benefit.

When personnel policies trump personal policies

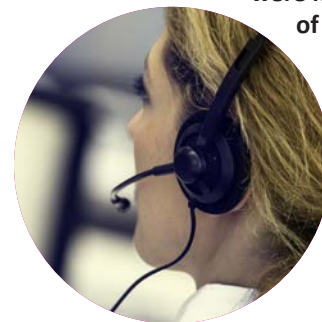
ELSIE RECEIVED A PHONE CALL ASKING HER TO TAKE PART IN A SURVEY BEING CONDUCTED BY THE YUKON GOVERNMENT'S BUREAU OF STATISTICS. SHE WAS NOT HAPPY TO RECEIVE THE PHONE CALL. SHE WANTED TO KNOW HOW THE BUREAU HAD OBTAINED HER PHONE NUMBER AND ASKED THE PERSON AT THE END OF THE LINE TO PROVIDE HIS SUPERVISOR'S NAME. THINGS WENT DOWNHILL FROM THERE.

Elsie brought a complaint to the Office of the Ombudsman because the person doing the survey had refused to provide the full name of the supervisor. Apparently, this supervisor had a 'personal policy' that his last name not be shared with the public. Elsie thought this was wrong, and that the supervisor's full name should be available to allow her to communicate easily and directly with the person in charge.

Our office looked into the matter for Elsie and found that the supervisor's 'personal policy' was not consistent with the policy the Bureau itself had in place for its staff.

The Bureau of Statistics does expect its supervisors to allow their full names and work telephone numbers to be shared with members of the public doing business with the bureau. The outcome of our work is that the bureau ensured that all staff

were made aware of the need to provide this kind of information, when asked.



HOW WE MEASURED UP IN 2017

Accountability

Improving Performance

Eleven of our informal resolution files and one of our investigation files did not meet our performance standards. Some of this can be explained by the increase in workload created by the *Health Information Privacy and Management Act* and the amount of work required to settle access to information reviews and complaints under the *Access to Information and Protection of Privacy Act*, which are time-driven processes. Notwithstanding these challenges, we must do better. I will be working with my team to explore ways to ensure that we are meeting these standards.

Building Relationships

Our primary method of building relationships in 2017 was through our file work. In 2017, we worked with a number of authorities. We found that our work with authorities was cooperative and our interactions were positive. We also found that those we work with understand our role and procedures. It helps to have designated contacts in each authority to resolve fairness complaints.

Despite this, we also find that some agencies of the Yukon government who are subject to the *Ombudsman Act* do not understand the role of the Ombudsman. To address this, we have included in our outreach strategy the need to raise awareness about our work with these authorities.

Demonstrating Accountability

See the statistics provided below and on page 10.



Photo by Alistair Maitland Photography

Work to facilitate fairness

- Our office is leading the development of a fairness evaluation tool.
- Our office coordinated delivery of an investigator’s workshop.

Skills development

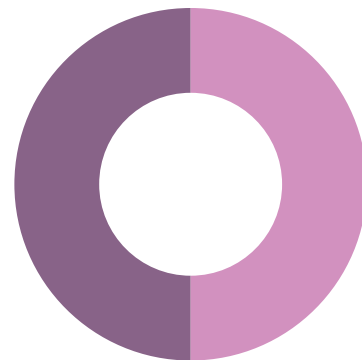
- Some of our staff attended a workshop on investigating and conducting administrative investigations.
- Yukon’s Ombudsman attended the meeting of the Canadian Council of Parliamentary Ombudsman, hosted by the Newfoundland and Labrador Citizens Representative in June, in St. John’s.

Complaints against the Ombudsman

- None

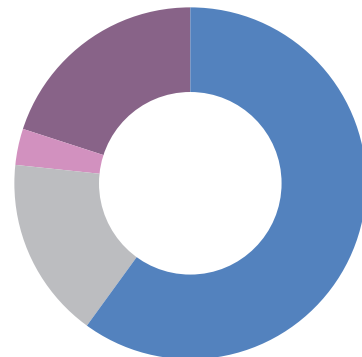
Ombudsman investigation - 1 year target

	Closed (within 1 year)	0
	Closed (over 1 year)	0
	Still open (within 1 year)	1
	Still open (over 1 year)	1



Ombudsman settlement - 90 day target

	Closed (within 90 days)	18
	Closed (over 90 days)	5
	Still open (under 90 days)	1
	Still open (over 90 days)	6

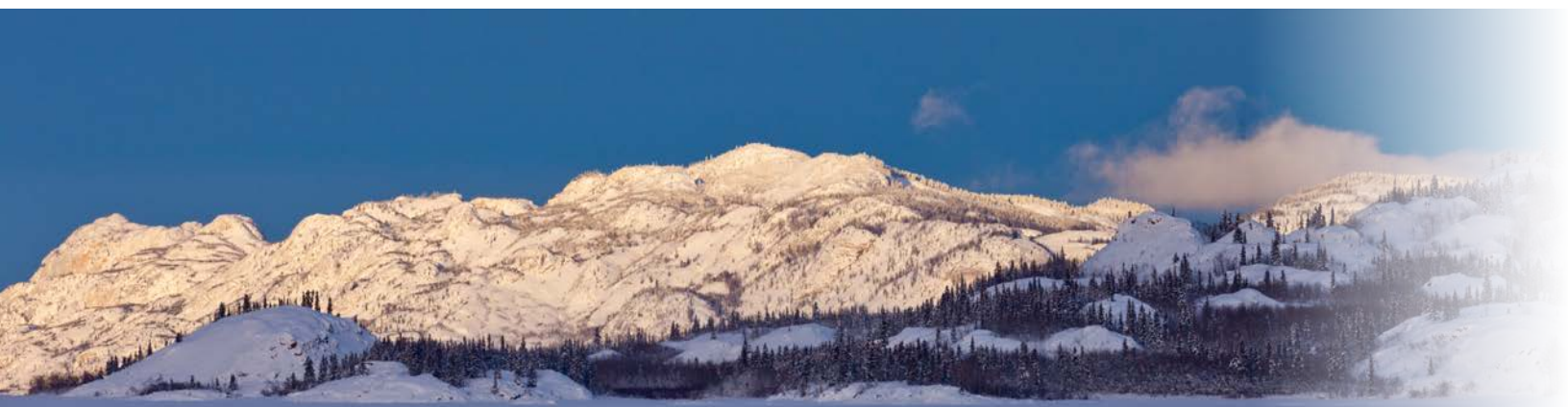


Files opened in 2017 by authority						
Authority	Number of files			Recommendations		
	Informal case resolution	Investigation	Total	Formal*	Accepted	Not yet implemented (includes from prior years)
Child Care Services Board	2		2			
Department of Community Services	1		1			
Department of Education	3		3			
Department of Energy, Mines and Resources		1	1			
Department of Health and Social Services	7		7			
Department of Highways and Public Works	1		1			
Department of Justice	2		2			
Executive Council Office	1		1			
Public Service Commission	1		1			
Yukon Hospital Corporation	1		1			
Yukon Human Rights Commission	1		1			
Yukon Workers' Compensation Health and Safety Board	3		3			
Total	23	1	24†			

Ombudsman Act - 2017 activity	
Resolved at intake - no file opened	
Non-jurisdiction	8
Referred-back	28
Requests for information	29
Informal complaint resolution	5
Total	70
File opened by type	
Informal Case Resolution files opened	24
Investigation files opened	1
Total	25
All files opened in 2017	25
Files carried over from previous years	7
Files closed in 2017	23
Files to be carried forward	9

*Formal recommendations are those made by the Ombudsman in a formal Investigation Report issued in 2017.

†One file was opened that was later found to be about a non-authority. That file is not listed in this table, although it is included in the chart above entitled Ombudsman Act – 2017 activity.





2017 ANNUAL REPORT OF THE YUKON INFORMATION & PRIVACY COMMISSIONER

The Honourable Nils Clarke
Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:

As required by section 47 of the *Access to Information and Protection of Privacy Act* and Section 97 of the *Health Information Privacy and Management Act*, I am pleased to submit the Annual Report of the Information and Privacy Commissioner for the calendar year 2017.

I am also pleased to share this with the Yukon public.

Kind regards,

Diane McLeod-McKay,
Yukon Information and Privacy Commissioner

A YEAR IN REVIEW

ATIPP Act

Privacy

Many Yukon government public bodies are in the process of developing their privacy management programs, including contact individuals, use of privacy risk management tools (such



as privacy impact assessments and security threat risk assessments) in the development of programs, services, and systems, and privacy training for all employees. We also had some complaints about privacy initiated by public servants. All this points to increased awareness by public servants about privacy, which is positive.

However, all is not good news. A report issued by the Yukon government's Internal Audit Services in early 2018 revealed that there is still a significant amount of work to be done by Yukon government public bodies in order to be compliant with the privacy provisions of the *Access to Information and Protection of Privacy Act* (ATIPP Act). Our experience working with these public bodies demonstrates that there is a lack of understanding about how these provisions operate, as well as misapplication of the provisions in some cases. In our work with public bodies, regardless of whether we are supporting compliance or enforcing it,

we take every opportunity to educate on how the privacy provisions of the ATIPP Act work. It is clear we need to work harder, together with the ATIPP Office perhaps, to increase awareness about these provisions to ensure they are being complied with. We are committed to this work and have incorporated it into our outreach strategy.

Challenges With Privacy Impact Assessments

Most Yukon government public bodies are now preparing privacy impact assessments (PIAs) when developing new information systems, programs, and services. PIAs allow public bodies to assess risks of non-compliance, including security breaches, and establish a plan with timelines to mitigate risks. The primary goal of using a PIA is to avoid non-compliance and breaches of privacy by building in privacy controls at the same time as the systems, programs, and services are developed. Currently, most Yukon government public bodies

who complete PIAs voluntarily submit them to the Office of the Information and Privacy Commissioner (IPC) for review and comment. Between 2013 and 2017, more than 30 PIAs were submitted to the IPC Office.

Upon receiving a PIA, our process is to review it, identify for the public body any potential risks of non-compliance, and provide feedback to help with mitigating those risks. Once we are satisfied the risks can be properly mitigated, we accept the PIA. Since 2013, we have accepted only two PIAs. The primary reason for this is that many public bodies are submitting the PIAs, receiving our initial feedback, which usually involves a number of questions, and in many cases do not contact us again. For that reason, these PIA files remain open and the risks, as far as we are aware, remain unaddressed.

This is a significant concern. However, I have no authority under the ATIPP Act

to require public bodies to participate in the process. I must rely on them to voluntarily work with us to mitigate risks.

The table on page 23 demonstrates the status of PIAs submitted to our office and shows that most PIAs submitted have yet to be accepted. To address this situation, I am hoping to see amendments to the ATIPP Act that require public bodies to submit PIAs to the IPC for review and comment, as well as some authority for the IPC to address significant risks to privacy which are unaddressed through that process.

Lack of Breach Reporting

In 2017, we received only two breach reports from public bodies and in the year before, only four. This trend suggests two things. Public bodies are not recognizing breaches or they are not reporting them to our office. Our experience in examining the breaches that are reported is that public bodies appear to need support to identify when notification is required due to a risk of significant harm from the breach, to identify causation, and to mitigate the risks of recurrence. My office has extensive experience investigating breaches of privacy and is, therefore, a valuable resource available for public bodies to protect against breaches.

Reporting privacy breaches is voluntary under the ATIPP Act but most health privacy laws, including Yukon's *Health Information Privacy and Management Act* (HIPMA), now have breach reporting requirements. Public sector privacy laws are now incorporating these requirements as they are amended. Breach reporting is an important measure of accountability for public bodies' compliance with privacy law. Consequently, I hope to see mandatory breach reporting as a requirement in the ATIPP Act once amended.

Access to Information

In 2013, when I first arrived in Yukon, I quickly learned that the privacy provisions of the ATIPP Act

had not been implemented fully or at all in some public bodies. There were, however, resources and administrative procedures in place centrally and within each public body to manage access to information requests. Given the risks to Yukoners' privacy, it was clear that I needed to focus on helping public bodies implement these provisions and hold them to account for any failure to do so. As indicated above, public bodies have implemented or are implementing these provisions and some positive work toward effective privacy management is underway. Over the past year, I have become more and more concerned about the administration of the access to information (ATI) provisions. I must, therefore, shift some of my focus from increasing privacy compliance to improvement of the ATI process. Below are examples of issues we noted with the ATI process in 2017:

- In an inquiry I conducted, a public body claimed numerous exceptions to thousands of records without providing sufficient reasons to support its application of these exceptions. I found that the public body failed to meet its burden of proof under the ATIPP Act for refusing access to the records and recommended it release the records after severing some personal information.



In another inquiry, a public body failed to apply the mandatory exceptions to a dataset, which left me in the position of having to decide if these exceptions applied to over a million data fields, without any submissions

from the public body. Most of the information in these records was releasable. Not responding to an ATI request properly and having it go through the review process unnecessarily delays the right to access information.

- My office has been contacted from time to time by employees who are tasked with processing ATI requests but have received very little to no training on how to do this work.
- On occasion when we are reviewing a decision about an access request we learn that the ATI provisions have not been properly considered by those processing the request.
- On a number of reviews received in 2017, my team had to work with ATIPP coordinators to identify the proper procedures for responding to ATI requests. These include the need to provide applicants with a schedule of records to help them understand any refusals or redactions, the need to work more closely with applicants to help them understand what records exist in order to focus their request, and the importance of using decisions of the Information and Privacy Commissioner (IPC) to help with interpreting the ATI provisions. This work should be done as part of the initial response stage, not during the review stage, and may point to resourcing and training issues within public bodies. When mediation fails, as occurred in a number of reviews this year, the IPC holds an inquiry to decide the matter under review. Adjudicating a review with thousands of records or millions of data fields is a significant amount of work, particularly without proper submissions. Improper management of an ATI request by public bodies is taking a toll on the resources of my office.

In my opening remarks, I indicated that one of my goals is to improve access to information by supporting Government of Yukon efforts to provide access to

information outside the ATIPP Act process and by ensuring those responsible for managing access to information in public bodies are better trained to manage access to information requests made under the ATIPP Act. A large part of my focus for my next term will be working toward this goal.

ATIPP Act Review

In December 2016, the Yukon government issued a consultation document following a survey in the summer of 2016, which asked for input about amendments to the ATIPP Act. In a Yukon News article on January 9, 2017, the Minister of Highways and Public Works indicated that a draft bill containing amendments to the ATIPP Act



would be distributed for consultation in May 2018. I expect that the bulk of amendments to the ATIPP Act will be to the privacy provisions, in order to facilitate more sharing of personal information between public bodies for integrated program or services delivery and to facilitate delivery of electronic services.

In my view, the ATIPP Act is outdated and requires updating to meet the demands of a modern economy. I support amendments to facilitate goals that improve service delivery by public bodies to Yukoners, as long as the foundation of privacy protection currently in the ATIPP Act is preserved and authority for oversight is expanded, such that the IPC has sufficient authority to effectively monitor these activities.

HIPMA

In our first full year of experience with the *Health Information Privacy and Management Act* (HIPMA), we opened 31 files. They were a mix of complaints, requests for advice, privacy impact assessments, and breaches.

Complaints

HIPMA is privacy legislation. As such, complaints focus on allegations that custodians are not following the rules for collecting, using, disclosing or securing personal health information. One complaint proceeded to the formal consideration procedure in 2017. This file is still open.

Requests for advice

Under HIPMA, the IPC has authority to “advise custodians and promote best practices.” In 2017, we provided advice 5 times. Most of the advice provided was geared toward helping custodians understand how to interpret and apply the legislation. HIPMA is complex legislation and we are happy to help custodians learn about it and implement its provisions.

PIAs

Seven mandatory privacy impact assessments were submitted. Most were submitted by the Department of Health and Social Services (HSS) on the electronic health record infrastructure in Yukon. As you can see from the table in the statistics section on page 24 of this annual report, these PIAs have yet to be accepted by my office, meaning that there are privacy risks identified in these PIAs, which I am not yet satisfied have been mitigated.

The *Health Information General Regulation* under HIPMA requires that HSS and Yukon Hospital Corporation submit PIAs to the IPC for review and comment. While this is positive, the IPC has no authority to address significant risks to privacy left unaddressed through this process. Given that HIPMA is designed to maximize the protection of personal health information in order

to prevent harm to individuals from a breach, when HIPMA is reviewed, I intend to recommend a more robust PIA process to ensure significant risks to privacy revealed through the PIA process are addressed.

Breaches

In 2017, we received four breach reports. Three were from the Department of Health and Social Services and one was from Kwanlin Dün First Nation Health Centre. Unfortunately, two of these involved snooping. Snooping occurs when a custodian employee, who has authorized access to an information system, views the information for an unauthorized purpose. In both cases, the employees who were caught snooping had accessed the personal health information of family members for a non-work-related purpose. See the *Stories About Our Work* section of this annual report to learn more about these breaches.



Snooping has proven to be a significant problem across Canada. In several provinces, including Alberta, Manitoba, Ontario, New Brunswick, and Newfoundland and Labrador, employees have been convicted of offences under health information privacy laws for snooping in information systems in order to see the personal health information of family, friends, co-workers, and others. Many of those charged under privacy laws were found guilty and ordered to pay fines. In 2017, a social work student on an educational

placement with a health care provider in Ontario was convicted of accessing the personal health information of more than 100 individuals, including her family and friends. She was fined \$25,000. In 2016, a physician working for a Moncton hospital was fired after he was found to have snooped in the medical records of 140 female patients, some of them co-workers. The best ways to prevent snooping are to have employees sign agreements acknowledging they may be terminated for snooping, to regularly audit information systems access, to inform employees that auditing is occurring, and to train employees so they are aware that they are not allowed to access information systems except for work purposes.

Under HIPMA, notifying individuals affected by a breach is mandatory if the custodian determines there is a risk of significant harm to the individuals as a result of the breach. A custodian must also provide the Information and Privacy Commissioner (IPC) with a copy of the notice at the same time it is provided to the individuals. It must also provide the IPC with a breach report containing certain information. The IPC has authority to review the breach and provide recommendations to mitigate the risk of recurrence. There are offences in HIPMA for failing to comply with these requirements.

Assistance to come

Given that HIPMA is new and complex, navigating its provisions takes time. We have found working with this legislation to be a challenge, as have custodians. As we become more familiar with the legislation and as our office issues decisions about interpreting HIPMA’s provisions, we will develop resources to assist custodians. In our outreach strategy, we have identified a number of measures to increase awareness about HIPMA amongst both custodians and the public.

Accountability

Improving Performance

Informal Case Resolution

HIPMA Considerations

HIPMA is similar to the ATIPP Act, in that there are timelines associated with considering a complaint. Our informal resolution team has only 30 days to try to settle a complaint. This time period can be extended by 60 days, if the IPC authorizes it. Our performance target for informal resolution is 90 days. When the 90-day period expires, the complaint moves to a formal consideration hearing for adjudication by the IPC. Of the complaint files opened under HIPMA, a majority were settled within 90 days. Only one went to consideration.

ATIPP Act Reviews

The timeline required to settle requests for reviews (RFRs) under the ATIPP Act is 90 days. Our informal resolution team met these timelines for the majority of RFRs under the ATIPP Act. Those that went beyond 90 days were settled soon after, before an inquiry was conducted.

ATIPP Act Investigations

There were a number of ATIPP Act informal resolution files that were open for more than 90 days, or are still open, for more than 90 days. The reasons for this vary. One file was on hold pending completion of an inquiry. In another case, we had trouble contacting the complainant. Many, however, exceeded the timelines due to workload and the pressure to meet the statutory timelines to settle ATIPP Act reviews and HIPMA considerations. We will need to work harder and smarter to meet these timelines.

Formal Investigation

ATIPP Act Investigations

There are six formal investigation files open under the ATIPP Act. All these files exceed our one-year performance target. These files were opened a number of years ago and all involve

complaints about accessing video records at Whitehorse Correctional Centre. To address these complaints, we have been working with the Department of Justice to complete a video surveillance privacy impact assessment (PIA). Part of this PIA addresses access to video records. The PIA was submitted, comments were provided and we are now waiting to hear if the department will accept our recommendations. If the recommendations are accepted, we will accept the PIA and close it, along with these six investigation files.

Building Relationships

Our primary method of building relationships in 2017 was through our file work. Over the past year, we worked with a number of public bodies and custodians. For the most part, we found public bodies and custodians to be cooperative and our interactions were positive. We also found that those we work with understand our role and procedures. It helps to have designated contacts in each public body and custodian for access to information and privacy matters.

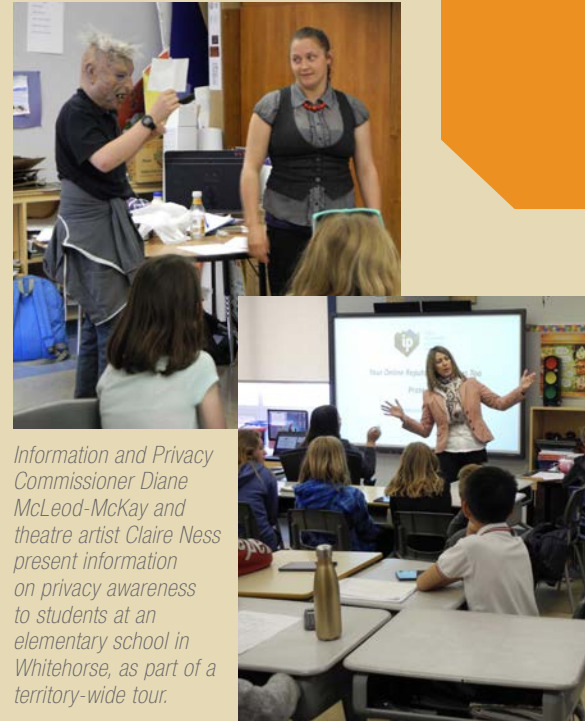
Outreach activities in 2017

2017 was a busy year for outreach. In the early part of 2017, one of my staff and I made numerous presentations to seniors. The goal of this outreach was to help seniors learn about Yukon's privacy laws, their rights under the laws, and the risks to privacy as a result of increased use of technology.

These presentations were well attended and we learned that seniors in Yukon are experiencing privacy risks. Several informed us that they had been impacted by scams and some lost money as a result. We also learned that there are many tech-savvy seniors in the territory.

In May and June of 2017, I worked with a Whitehorse-based theatre artist, Claire Ness, on a privacy awareness initiative. We travelled throughout Yukon, making presentations to students to help them learn about how to protect their and their friends' privacy. We had developed an

interactive presentation, which included the use of technology, giant puzzles and costumes. Claire was instrumental in making the presentations fun and the kids had a lot of laughs while learning. They also had a few tough questions for us. We learned that kids in Yukon are very tech-savvy and that they routinely use social media. They also told us that they would never say anything bad about their parents online. (Great job, kids!)



Information and Privacy Commissioner Diane McLeod-McKay and theatre artist Claire Ness present information on privacy awareness to students at an elementary school in Whitehorse, as part of a territory-wide tour.

In the summer of 2017, my team and I developed a comprehensive outreach strategy designed to increase awareness about the rules in the ATIPP Act and HIPMA for public servants and health care providers. Part of the strategy also focusses on increasing public awareness about these laws and the rights they afford to Yukoners. As part of this plan, we will be communicating with the public about the release of the 2017 Annual Report in a new and unique way. In 2018 we will begin rolling out the outreach strategy.

Demonstrating Accountability

See the statistics provided on pages 21 to 24 of this report.

► Questions of privacy

SAMANTHA ANSWERED HER CELL PHONE ONE AFTERNOON TO DISCOVER THE CALLER WAS FROM THE YUKON BUREAU OF STATISTICS. THE CALLER HAD SOME QUESTIONS FOR HER ABOUT EDUCATION AND JOBS, AS PART OF A SURVEY BEING DONE ON BEHALF OF THE EDUCATION DEPARTMENT'S ADVANCED EDUCATION BRANCH. SAMANTHA HAD NOT GIVEN HER NUMBER TO THE BUREAU AND SHE FELT THE NUMBER HAD BEEN SHARED IMPROPERLY.

Samantha had previously provided her cell number to the Department of Education for another purpose but her understanding was that her personal information, such as her cell number, could not be shared with another department, or used in another way, without her permission.

She brought her complaint to the Office of the Information and Privacy Commissioner.



Our informal resolution team looked into Samantha's complaint by considering whether the Bureau of Statistics had complied with the *Access to Information and Protection of Privacy Act* (ATIPP Act). We also looked at the *Statistics Act* and at information given to us by the bureau.

The ATIPP Act authorizes a public body to collect personal information, if another law authorizes the collection. We confirmed that the *Statistics Act* gives the bureau access to information in government

departments for the purpose of helping those departments collect and compile statistical information. In this case, that's exactly what the bureau was doing, through a telephone survey, for the Advanced Education Branch. That meant the bureau was able to obtain and use Samantha's name and telephone number.

Sections of the *Statistics Act* and the ATIPP Act work together to provide legal authorization for the Bureau of Statistics to collect personal information, such as cell phone numbers, from other departments, in order to conduct its work of gathering statistics.

► Addressed to privacy

MARGARET AND HER HUSBAND BLAKE WERE SHARING A HOME AND CARING FOR THEIR BABY SON AND FOR BLAKE'S DAUGHTER FROM A PREVIOUS RELATIONSHIP. AFTER A TIME, BLAKE'S DAUGHTER MOVED TO LIVE WITH HER MOTHER DONNA. SHORTLY AFTER, MARGARET WAS SURPRISED TO RECEIVE A TEXT FROM DONNA, WITH A PICTURE OF MARGARET'S HEALTH CARE CARD. THE CARD HAD BEEN MISTAKENLY MAILED TO DONNA'S HOME. MARGARET BECAME CONCERNED ABOUT THE PRIVACY OF HER PERSONAL HEALTH INFORMATION AND CONTACTED THE INFORMATION AND PRIVACY COMMISSIONER.

When Margaret brought her complaint to us, she had already contacted the Department of Health and Social Services (HSS) to let them know of the mistake. HSS representatives had said the error in her address had been corrected,



but because of some confusing information from Donna, Margaret was still worried that her health care card might have been sent to the wrong address more than once.

We found that the error had been caused by the software HSS uses to generate health care cards. A programming feature meant that if one person in a household changed address, all others in the household were assigned the same new address. The only way to prevent this was for the HSS registration assistants to manually over-ride this feature. In this case, the manual over-ride had not been done properly. Everyone in the household, including Margaret, Blake, and the two children, had had their address changed to Donna's address. Margaret was the only one to notice it, because her birthday came earliest in the year, and she was the first one to have her health care card mailed out after the address change.

We found no evidence that Margaret's health care card had been mailed out to the wrong address more than once. However, we did work with HSS to identify several measures they should take to prevent this from occurring again.

1. HSS would contact Donna and ensure Margaret's health care card was either destroyed or sent back.
2. HSS would inform Margaret of what had happened and why, and what steps had been taken to correct it.
3. HSS would ensure all registration assistants were aware of the programming feature to try to prevent this type of error from happening again.
4. HSS would update the operating manual or instructions used by the registration assistants, with the goal of preventing future occurrences of this error.

This case is a good example of how important employee training is to ensure the protection of privacy for Yukoners. Without the proper training, Yukon government workers have a much harder time being effective in this most important aspect of their jobs.

▶ When what's public must still be kept private

RALPH HAD A NUMBER OF CONCERNS WITH THE WAY HE HAD BEEN TREATED BY SEVERAL DEPARTMENTS WITHIN THE YUKON GOVERNMENT. SOME OF THESE CONCERNS HAD BEEN REPORTED IN THE LOCAL MEDIA. RALPH DECIDED TO OUTLINE HIS CONCERNS IN A LENGTHY EMAIL, WHICH WAS RECEIVED BY THE PUBLIC SERVICE COMMISSION (PSC). THAT EMAIL WAS FORWARDED IN ITS ENTIRETY TO A NUMBER OF PSC EMPLOYEES AS WELL AS AN EMPLOYEE

authority to collect it. Most often, as in this case, a public body has authority to collect personal information for a particular program or activity. No matter how the personal information is received, the public body can only collect the personal information it needs to administer the particular program and no more. Ralph's email contained personal information related to programs in other departments, which the PSC was not authorized to collect, as well as information the PSC did not need to collect in order to address the concerns related to its programs.

The fact that some of the personal information in the email was available elsewhere (for example, in the local papers) was irrelevant to determining whether the PSC could collect, use and disclose the personal information in the email. The ATIPP Act governs the collection, use, disclosure and management of personal information by public bodies. Therefore, a public body must always adhere to the rules set out in the ATIPP Act when they are collecting, using and disclosing personal information. Failing to do so will result in breaches of privacy.

Our office worked with the PSC to settle the complaint. It agreed to develop and implement a policy and procedure to provide better direction to staff on how the ATIPP Act requires them to handle unsolicited personal information, whether it comes in an email, or some other way. Also PSC agreed to develop a plan to retrieve the email from those not authorized to have it.

This complaint touches on an area not well understood within government. Public bodies must follow the rules of the ATIPP Act when they receive personal information, no matter how the information comes into their possession, and even if the information is available publicly elsewhere.



IN ANOTHER DEPARTMENT. WHEN RALPH FOUND OUT ABOUT THIS, HE COMPLAINED TO THE INFORMATION AND PRIVACY COMMISSIONER ABOUT HIS PERSONAL INFORMATION BEING DISTRIBUTED IN THIS WAY.

Our office investigated whether the PSC's collection, use and disclosure of the personal information in the email was compliant with the *Access to Information and Protection of Privacy Act* (ATIPP Act). We concluded that the PSC did not follow a number of the rules set out in the ATIPP Act intended to protect the privacy of personal information.

Public bodies cannot collect personal information unless authorized by the ATIPP Act. Even though Ralph willingly sent the personal information to the government, without being asked to do so, it doesn't mean the PSC has the

Also, a public body can only use personal information it is authorized to collect to the extent necessary to enable it to carry out its purpose. Forwarding the entire email to a number of employees in the PSC resulted in the use of more personal information than was needed by the recipients to perform their duties. When dealing with sensitive personal information, a better practice is to create a new email, and take care not to disclose personal information not needed by others.

Finally, public bodies cannot disclose personal information to another public body unless the disclosure is authorized by the ATIPP Act. The PSC's disclosure to the employee in another government department was determined to be unauthorized.



▶ Doing more is not always doing better

GLADYS HAD TO TRAVEL TO VANCOUVER FOR SOME MEDICAL TESTS. SHE DECIDED TO DRIVE RATHER THAN FLY. SHE KNEW THERE WOULD BE SOME PAPERWORK TO DO, TO PROVE HER TRAVEL WAS REALLY FOR THE PURPOSES OF MEDICAL TREATMENT, AND SO THAT SHE WOULD RECEIVE THE YUKON GOVERNMENT MEDICAL TRAVEL SUBSIDY. HOWEVER, SHE CAME TO THE INFORMATION AND PRIVACY COMMISSIONER WITH A COMPLAINT THAT THE GOVERNMENT WAS SIMPLY ASKING TOO MUCH.

Gladys knew that when she returned to Yukon, she would have to submit a form, signed by a physician, confirming that she had attended all her scheduled medical appointments. In addition, she was happy to sign the statutory declaration confirming that she had travelled for the purpose of medical treatment.

However, in addition to these two things, Insured Health and Hearing Services (IHHS) in the Department of Health and Social Services required her

to submit all her original gas receipts for the travel to and from Vancouver. Gladys knew that the amount of travel subsidy she was eligible for was the same whether she drove or flew. She thought IHHS was collecting more information about her than it needed, such as the dates of her travel, where she stopped for gas, and her credit card information, to determine her eligibility for the travel subsidy. Gladys contacted our office to see if we could help.

The *Health Information Privacy and Management Act* (HIPMA) authorizes a custodian to collect information that is related to and necessary for carrying out a program or activity of the public body. We confirmed with IHHS that the Yukon government's *Travel for Medical Treatment Program* is available to help eligible residents with the cost of medically necessary transportation. We also confirmed that by law individuals who are approved for medical travel outside of Yukon and who choose to travel by road receive the same amount of travel subsidy as if they had travelled by airplane.



IHHS agreed it did not need gas receipts in order to pay Gladys the transportation subsidy. IHHS amended its policy, as well as the form completed by those driving to medical appointments outside Yukon. The requirement to produce gas receipts was removed.

Public bodies must ensure they are not collecting more information than necessary for a given program or service. When they over-collect, they are contravening rules set out in HIPMA.



▶ No, no ... 2 thousand times no

MARILYN MADE AN ACCESS TO INFORMATION REQUEST TO THE DEPARTMENT OF ENVIRONMENT. SHE WAS LOOKING FOR A WIDE RANGE OF RECORDS, ALL OF WHICH RELATED TO HERSELF AND HER JOB. THE DEPARTMENT GAVE MARILYN FULL OR PARTIAL ACCESS TO ABOUT 1700 PAGES OF RECORDS, BUT DENIED HER ACCESS TO OVER 2000 PAGES. MARILYN WAS NOT SATISFIED WITH THE DEPARTMENT'S RESPONSE AND ASKED THE INFORMATION AND PRIVACY COMMISSIONER FOR HELP.

The Department of Environment gave a number of reasons for refusing Marilyn access to the records. It cited various sections of the *Access to Information and Protection of Privacy Act* (ATIPP Act) which provide exceptions to a person's right to access records. The exceptions used by Environment in

Marilyn's case included litigation privilege, Cabinet briefing, Executive Council confidence and workplace harassment.

Under the ATIPP Act, it is up to the public body to prove that the exceptions apply. It is not enough to merely state a belief that an exception in the ATIPP Act applies; rather, the public body must provide evidence to support that assertion.

During her inquiry into this complaint, the Information and Privacy Commissioner (IPC) found that in nearly every case, Environment failed to meet its burden of proving the stated exceptions applied.

The IPC recommended to Environment that it give Marilyn access to all the records that had been refused, after removing any personal information that would be an unreasonable invasion of personal privacy.

When someone makes a request under the ATIPP Act, they have the right to access the information. This is a fundamental right, unless an exception in the act applies. It is important for public bodies to realize that if they intend to refuse access based on an exception, they must do their homework before applying the exception, to ensure it applies.



▶ Not a family affair

ALLAN WORKS FOR THE KWANLIN DÜN FIRST NATION HEALTH CENTRE (KDFNHC), AND AS PART OF HIS JOB, HE HANDLED RECORDS OF PERSONAL HEALTH INFORMATION. HE WAS ASKED TO WORK ON SOME RECORDS AT HOME. WHEN HE WORKED ON THEM, HE ASKED A RELATIVE TO GIVE HIM A HAND. THIS IS WHERE THINGS WENT WRONG.

KDFNHC is a custodian under the *Health Information Privacy and Management Act* (HIPMA). HIPMA sets out rules about how personal health information should be collected, used, disclosed and secured. It also defines what constitutes a breach of privacy, and what must be done when a breach occurs. In Allan’s case, when his employer found out that his relative had accessed the records, it was clear a privacy breach had occurred. As required by HIPMA, his employer then notified those individuals whose privacy was breached and reported the breach to the Information and Privacy Commissioner.

A privacy breach occurred in this case because Allan’s relative had access, without authorization, to sensitive personal health information about

the KDFNHC’s patients. Allan’s relative was not an employee of KDFNHC and did not have authorization to access the records. This access constituted a violation of HIPMA.

As part of the Information and Privacy Commissioner’s review of this incident, she looked at KDFNHC’s information management practices and training. This led to three recommendations to improve those practices and training, and prevent a similar incident from occurring in the future. KDFNHC accepted her recommendations.

Some individuals require access to personal health information in order to do their job. Under HIPMA, personal health information may only be accessed by those individuals who require this information to do their job and only if the custodian has authorized this access. HIPMA is relatively new legislation in Yukon, and it’s important that custodians of personal health information provide training to support workers in complying with the law.

▶ Snooping is serious!

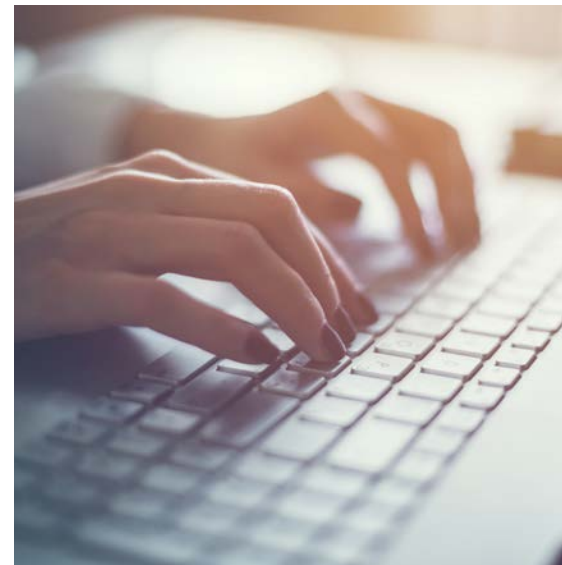
THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES (HSS) IS ONE OF THE MOST SIGNIFICANT CUSTODIANS OF PERSONAL HEALTH INFORMATION IN THE TERRITORY. IT COLLECTS, USES, DISCLOSES AND SECURES A LARGE AMOUNT OF PERSONAL HEALTH INFORMATION ABOUT YUKONERS. SO IT WAS CONCERNING TO LEARN THAT TWO OF THE THREE PRIVACY BREACHES REPORTED IN 2017 BY HSS INVOLVED EMPLOYEE SNOOPING.

In both snooping incidents, employees had accessed an HSS information system for an unauthorized purpose. They were accessing the personal health information of family members, for their own personal reasons. HSS notified the affected individuals who were at risk of significant harm and reported the breach to the Information and Privacy Commissioner (IPC). In its report, HSS indicated that after these two incidents, it took a number of steps to prevent this from happening again, including the implementation of audit protocols.

The third privacy breach reported by HSS involved the loss of a patient chart at a community health care centre. The patient was promptly informed about the breach and HSS submitted a report about the breach to the IPC.

Following her review of the reports from HSS about these breaches, the IPC made a number of recommendations to prevent recurrence. HSS accepted all her recommendations.

Our office is pleased that privacy breaches are being reported. The IPC wants to remind custodians that notifying individuals who are at risk of significant harm must occur quickly so the individuals can protect themselves. In her comments to HSS about one of the breaches, the IPC expressed concern that HSS took nearly two months to notify the affected individuals of the



breach.

What is a privacy breach? What must be done when a breach occurs?

The *Health Information Privacy and Management Act* (HIPMA) sets out rules about how personal health information must be handled.

A privacy breach occurs when there is a theft or loss of personal health information, or if it is accessed, disclosed or disposed of by someone who is not authorized to do so.

One of the requirements under HIPMA is that any privacy breach, where there are reasonable grounds to believe that the affected individual is at risk of significant harm as a result of the breach, must be reported to the Information and Privacy Commissioner by the custodian of that personal health information.

In addition, the custodian must quickly assess the risk of harm from the privacy breach to any affected individual. If the risk is significant, the custodian must notify the affected individual as soon as is reasonably possible. The purpose of this is to give that person the opportunity to take action to prevent harm.

Mandatory breach notification is an important aspect of the requirements under HIPMA because of the protection it affords the public when privacy breaches do occur.

▶ Aggrieved about privacy

HAROLD WORKED FOR THE DEPARTMENT OF EDUCATION AND WAS GOING THROUGH A GRIEVANCE PROCEDURE, ASSISTED BY HIS UNION, UNDER THE COLLECTIVE AGREEMENT. HE WAS DISMAYED TO FIND THAT BOTH HIS UNION REPRESENTATIVE AND AN ASSISTANT DEPUTY MINISTER IN EDUCATION TAKING PART IN THE GRIEVANCE PROCESS HAD RECEIVED RECORDS CONTAINING HIGHLY SENSITIVE PERSONAL INFORMATION ABOUT HIM.

The information was in regard to claims Harold had previously made for compensation to the Yukon Workers' Compensation Health and Safety Board and for Yukon government disability leave benefits. The records contained highly sensitive personal information about Harold's health. Harold believed that the records were unrelated to his grievance and should not have been disclosed or used during the grievance process. He brought his complaint to the Office of the Information and Privacy Commissioner (IPC).

The IPC considered the matter under the *Access to Information and Protection of Privacy Act* (ATIPPA Act).

She found that the records which had been disclosed were not pertinent or necessary to the grievance process, and that the Department of Education did not have the authority to disclose or use the records for this process.



The IPC made two recommendations to the department to prevent this type of problem from recurring. She recommended that the department develop policy or procedure to guide employees who are responsible for making decisions about the disclosure and use of personal information during a grievance process. She also recommended that employees be trained on this policy/procedure, and that all staff be made aware of the policy/procedure, so they know when their personal information might be used or disclosed during a grievance process. The department accepted her recommendations.

▶ A wrinkle in timelines

THE JURISDICTION OF YUKON'S INFORMATION AND PRIVACY COMMISSIONER (IPC) WAS CHALLENGED IN 2017 BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES (HSS) AND THE YUKON HOSPITAL CORPORATION (YHC). THE FOCUS OF THE CHALLENGE WAS ON WHETHER THE IPC HAD LOST JURISDICTION TO CONSIDER COMPLAINTS AGAINST THOSE TWO BODIES UNDER THE *HEALTH INFORMATION PRIVACY AND MANAGEMENT ACT* (HIPMA).

HIPMA sets out rules about how personal health information should be collected, used, disclosed and secured. It also defines what constitutes a breach of privacy, and

what must be done when a breach occurs. The IPC has the power under HIPMA to investigate a complaint about a custodian's non-compliance with HIPMA. The IPC has 150 days to complete an investigation. An investigation consists of two parts. First, she must try to settle the complaint. Second, if settlement fails, she must consider the complaint. A consideration is a formal hearing.

The YHC and HSS argued that the IPC had lost her jurisdiction to consider these complaints because she had not completed her consideration within the timelines set out in HIPMA of two complaints, one against HSS and one against the YHC.

The IPC reviewed the position taken by the two organizations, which are both custodians of personal health information under HIPMA. She determined that the timelines in HIPMA are not mandatory. This means that although she did not complete the consideration of the complaints within the timelines set out in HIPMA, the result was not a loss of jurisdiction.

This jurisdictional challenge and its resolution are important for all Yukoners because the consequences of a loss of jurisdiction would have been substantial. People with a complaint about the way their personal health information is handled can only have their complaints addressed through HIPMA. There is no other avenue available to them. Independent investigation by the IPC is a key measure for holding custodians accountable for following the rules set out under this law.



SHOUT OUTS

Shout out to **all the students** in the territory who participated in learning about how to protect your privacy online. This great group of kids taught us a thing or two about social media.



Shout out to **Claire Ness** whose talent as an entertainer made learning about privacy fun.
Thanks Claire.



HOW WE MEASURED UP IN 2017

Proactive compliance work

- Our office coordinated the delivery of a workshop on investigating and conducting administrative investigations. This workshop was well attended by a number of individuals including employees of public bodies.

Skills development

- Our office's staff attended an information security presentation to increase knowledge in this field.
- Some of our staff attended the investigator's workshop to improve investigative skills and writing.
- Some of our staff attended e-services conferences to learn

about the future of electronic services delivery and innovation.

- Yukon's Information and Privacy Commissioner attended the national federal/provincial/territorial meeting of her counterparts across Canada, held in Iqaluit in October.

ATIPP Act - 2017 activity	
Resolved at intake - no file opened	
Non-jurisdiction	2
Referred-back	0
Requests for information	21
Informal complaint resolution	0
Total	23
Files opened by type	
Request for review	17
Comment files opened	7
Complaint investigation	9
Total	33
All files opened in 2017	33
Files carried over from previous years	53
Files closed in 2017	33
Files to be carried forward	53

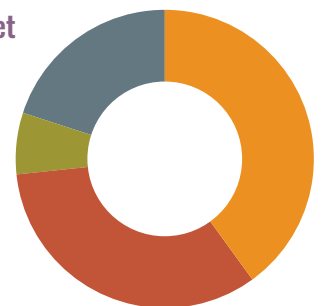
ATIPP investigation (formal) - 1 year target

Closed (within 1 year)	0
Closed (over 1 year)	0
Still open (within 1 year)	0
Still open (over 1 year)	6



ATIPP investigation (settlement) - 90 day target

Closed (within 90 days)	6
Closed (over 90 days)	5
Still open (under 90 days)	1
Still open (over 90 days)	3



ATIPP review - 90 day target

Settled (within 90 days)	11
Still open (within 90 days)	3
Closed (over 90 days)	4
Not settled (formal hearing)	3



Files opened in 2017 by public body							Recommendations		
Public body	Number of files					Formal*	Accepted	Not yet implemented (includes from prior years) or Failed to comply	
	Complaints		Comments	Reviews					Total
	Informal resolution	Investigation		Informal resolution	Inquiry				
Department of Community Services	2		1 - Privacy breach	1		4			
Department of Economic Development				1		1			
Department of Education			2 - Privacy breach			2	1	1	
Department of Energy Mines and Resources	1			2		3			
Department of Environment	1			6		7	9	9	
Department of Finance	1			1		2			
Department of Health and Social Services	1			1		2			
Department of Highways and Public Works	1		1 - PIA	1	1	4			
Department of Justice			1 - General 1 - Policy/protocol	1		3		1	
Department of Tourism and Culture	1					1			
Public Service Commission			1 - PIA	1		2			
Yukon Workers' Compensation Health and Safety Board	1			1		2			

*Formal recommendations are those made by the IPC in an Inquiry or Investigation Report issued in 2017.

Files opened in 2017 by custodian						Recommendations		
Custodian	Number of files					Formal*	Accepted	Not yet implemented (includes from prior years)
	Complaints		Comments	Request for advice	Total			
	Informal resolution	Consideration						
Department of Health and Social Services	9		6 - PIA 1 - General 3 - Privacy Breach	2	21			
Dr. Armando Heredia	1				1			
Kwanlin Dün Health Centre			1 - Privacy Breach	1	2			
Polar Eyes Optometry				1	1			
Shoppers Drug Mart	1				1			
True North Respiratory Therapy Services				1	1			
Whitehorse Medical Services Ltd.	1				1			
Yukon Hospital Corporation	1	1	1 - PIA		3			

*Formal recommendations are those made by the IPC in a Consideration Report issued in 2017.

ATIPP compliance review activities

Public body	PIA submitted (year submitted)	Status – Accepted (A) /Not Yet Accepted (NYA) /no review (NR)
Department of Community Services	Building Safety, 2015	NYA
	Personal Property Security Registry, 2015	A
	Yukon Corporate On-line Registry (YCOR), 2015	NYA
Department of Education	Education Employment Assistance Database, 2012	NYA
	Challenge Day Program, 2015	NYA
	Google Apps, 2015	NYA
	Student Information System (ASPEN), 2015	NYA
Department of Environment	Electronic and Online Licensing System, 2015	NYA
Department of Finance	Online AR Payments, 2016	NYA
Department of Health and Social Services	Panorama Project, 2013	NYA
	Electronic Incident Management Report System, 2014	NYA
	Lab Information System (LIS) Connect Phase 1, 2015	NYA
	Pioneer Utility Grant Program, 2015	NYA
Department of Highways and Public Works	Motor Vehicles IDRIV System, 2014	NR
	Access to Information Program, 2015	NYA
	Government Services Account, 2015	NYA
	Online Vehicle Registration Renewal, 2016	NYA
	Simple Accommodation, 2017	NYA
Department of Justice	Land Titles Registration, 2016	NR
	Video Surveillance System, 2016	NYA
Public Service Commission	Disability Management and Accommodation, 2017	NYA
Yukon Hospital Corporation	HIS Connect – Lab Information System PIA, 2014	NYA



Photo by Alistair Maitland Photography

HIPMA compliance review activities

Custodian	PIA submitted (year submitted)	Status – Accepted (A)/Not Yet Accepted (NYA)/no review (NR)
Department of Health and Social Services	GENIE, 2017	NYA
	Chronic Disease Management Toolkit, 2017	NYA
	Home Care Virtual Visits Project, 2017	NYA
	Congenital Anomalies Support Yukon, 2017	NYA
	Medigent, 2017	NYA
	Vitalware, 2017	NYA
	Drug Information System, 2016	NYA
	e-Health Client Registry with Plexia, 2016	NYA
	Yukon Home Health Monitoring Trial, 2016	NYA
	Yukon Take-Home Naloxone Program, 2016	NYA
Yukon Hospital Corporation	eHealth Client Registry, 2016	NYA
	LIS Connect Phase 2, 2016	NYA
	Meditech, 2017	NYA

HIPMA - 2017 activity

Resolved at intake - no file opened

Non-jurisdiction	0
Referred-back	1
Requests for information	26
Informal complaint resolution	0
Total	27

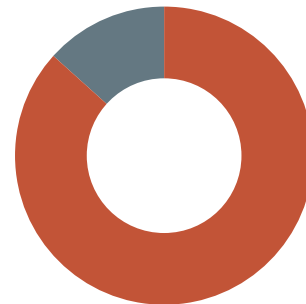
Files opened by type

Consideration files opened	14
Request for comment	12
Request for advice	5
Total	31

All files opened in 2017	31
Files carried over from previous years	11
Files closed in 2017	20
Files to be carried forward	22

HIPMA informal - 90 day target

Settled (within 90 days)	13
Still open (within 90 days)	0
Not settled (formal hearing)	2





2017 ANNUAL REPORT OF THE YUKON PUBLIC INTEREST DISCLOSURE COMMISSIONER

The Honourable Nils Clarke
Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:
As required by section 43 of the *Public Interest Disclosure of Wrongdoing Act*, I am pleased to submit the Annual Report of the Public Interest Disclosure Commissioner for the calendar year 2017.

I am also pleased to share this with the Yukon public.

Kind regards,

A handwritten signature in black ink, appearing to read 'D.McLeod-McKay', with a long horizontal line extending to the right.

Diane McLeod-McKay,
Yukon Public Interest Disclosure Commissioner

A YEAR IN REVIEW

In 2017, only two files were opened under the *Public Interest Disclosure of Wrongdoing Act* (PIDWA). One was an advice file and the other a disclosure that did not proceed to investigation. We spent a considerable amount of time this year working to complete a disclosure investigation that began in 2015. The investigation was complex and given it was our first investigation under PIDWA, we took great care to ensure we conducted a thorough investigation. Our investigation was completed on October 27, 2017. The public entity was provided with a preliminary investigation report for review and comment. Our final investigation report was provided to the public entity on December 8, 2017.

In the *Stories About Our Work* section of this annual report, you can read information about our investigation into the allegations of wrongdoing disclosed to us. Our aim in reporting this information is to highlight the importance of PIDWA in protecting the public interest.

One of the purposes of PIDWA is to facilitate the disclosure and investigation of significant and serious matters that may be unlawful, dangerous to the public, or injurious to the public interest. Despite the reprisal protection in PIDWA, making a disclosure in Yukon about a potential wrongdoing takes courage and I commend the individual who had the courage to make this disclosure to us.

The disclosure we received was about the Whitehorse International Airport, an asset that is of significant importance to Yukoners. As you will see from our investigation into its leasing and development process, we found that some of the alleged wrongdoings were unfounded but that others were founded. The purpose of our investigation was to bring any wrongdoing to the attention of the public entity, so that it could be remedied. Our investigation report to the public entity detailed our findings and reasons, and contained

our recommendations to remedy the wrongdoing. After some clarification of our facts and findings by the public entity, and some discussion about our recommendations, the public entity accepted the recommendations. I would like to highlight that the public entity was fully cooperative with our investigation. In the end, I am of the view that this process benefitted the public.

Recognizing Disclosures

On a few occasions, we have been approached by employees or former employees of the Yukon government, who have communicated information to their supervisors that appears to have been disclosures of wrongdoing but were not recognized as such by those to whom the disclosure was made. In discussion with these individuals, we learned they did not receive any information or training



Photo by Alistair Maitland Photography

about making a disclosure. I have also spoken with senior government officials who were never informed about their obligations under PIDWA. This is a concern for me. If employees are not informed about how to make a disclosure or how to recognize one when made, disclosures may fall through the cracks. To address this issue, I have included in my outreach strategy a plan to communicate information about PIDWA to employees, public entities, and unions in the coming year, in order to raise awareness about the purposes of PIDWA and the protections it affords to disclosers of wrongdoing. To this end, I have included in this annual report information about making a disclosure, reprisal protection, and the ability to seek advice from the

Office of the Public Interest Disclosure Commissioner (PIDC) under PIDWA.

What employees need to know to make a disclosure under PIDWA

The primary purpose of PIDWA is to provide a tool that employees of Yukon public entities can use to disclose wrongdoings without reprisal repercussions. As long as you, the disclosing employee, follow the disclosure rules, you will be protected from reprisal. If you don't follow PIDWA rules when making a disclosure of wrongdoing, you run the risk of not receiving this protection. It's important for you to know that even if you just need advice in deciding whether to make a disclosure or not, PIDWA protects you.

So what are the rules? I've summarized them below, although I also encourage every employee to review the legislation. It's relatively short and not overly complicated. A link to PIDWA can be found on our website at www.ombudsman.yk.ca/pidwa-act.

Disclosure rules

1. You must be an employee of a public entity to report a wrongdoing. You can also be a former employee who suffered a reprisal and was terminated by a public entity. In addition, you can be a contract employee but not a 'fee-for-service' contractor. See page 30 for a list of public entities.
2. You must have a reasonable belief that a wrongdoing is being or may be committed.
3. Your disclosure must be made in good faith.
4. You must **only** disclose a wrongdoing to:
 - a supervisor (i.e. your immediate supervisor or chief executive)
 - the designated officer, if one exists in your public entity, or
 - the Public Interest Disclosure Commissioner (PIDC).
5. You must make your disclosure in writing and it must include, if known, the following information:



- a description of the wrongdoing
 - the name of the individual(s) alleged to have committed, or who may be about to commit, the wrongdoing
 - the date of the wrongdoing
 - whether the disclosure has been made to someone else (for example, if you disclosed to your immediate supervisor, did you also disclose to your chief executive or the PIDC) and what response was received
 - other information, if prescribed (there are currently no regulations prescribing additional specifics), and
 - any other information the person receiving the disclosure identifies as reasonably necessary to investigate the allegation.
- you make the disclosure to the appropriate law enforcement agency
 - you follow any direction the law enforcement agency issues, and
 - immediately following the disclosure, you notify your supervisor or, if one exists, your designated officer.

You are not allowed to disclose to the public any information that is subject to a restriction created by a Yukon or federal law.

Additional limits on information disclosure

When making any disclosure, you are not allowed to disclose the information described in subsection 15 (1) “Cabinet confidence” of the ATIPP Act unless the circumstances in subsection 15 (2) exist. You must also limit the amount of personal information disclosed to that which is necessary to make the disclosure. The ATIPP Act can be found on our website at www.ombudsman.yk.ca/atipp-act.

How public entities can help ensure employees are protected by PIDWA

Chief executives of public entities are required by PIDWA to ensure information about the legislation is widely communicated to their employees. They must also do this if they establish their own disclosure procedures.

Other than what was communicated by the Public Service Commission when

PIDWA was proclaimed in June of 2015 and my office’s outreach work, I am not aware of any work undertaken by public entities to inform their staff. I do understand that one public entity is currently drafting disclosure procedures.

For those public entities that have not adequately informed their employees about PIDWA, there is a risk that employees may inadvertently make disclosures contrary to the requirements of PIDWA. There is also a serious risk that staff are receiving disclosures but are not recognizing them as a disclosure under PIDWA. As a result, they may steer the disclosing employee down an incorrect path. In either case, the employee may pay the price for the failure of public entities to inform them adequately about the legislation.

It is very important that staff receiving a disclosure, or what may appear to be a disclosure, first apply it to PIDWA before making any other determination, such as a process under another piece of legislation, an employment agreement or an applicable policy. Given this, I strongly encourage chief executives to take proactive steps this year to ensure their employees are well informed about PIDWA.

For those public entities that are drafting disclosure procedures, I strongly recommend that these procedures be geared solely to employees, as they are defined in PIDWA, so that the rules employees must follow for PIDWA reprisal protection are clear. A public entity that creates disclosure procedures that apply to more than just PIDWA-defined employees, no matter how well-intentioned, runs the risk of failing to clarify exactly what rules employees must follow to be afforded PIDWA protection.

How reprisal protection works should be clarified in any policy or communication provided to staff to ensure that they know about these procedures and their rights.

When making a disclosure directly to your public entity, be sure to inform them that you are making a disclosure under PIDWA, so it is clear what your intentions are. I strongly recommend that you obtain advice prior to making any disclosure. This advice can be obtained from your immediate supervisor or chief executive, a designated officer, or the Public Interest Disclosure Commissioner.

Disclosing in urgent situations

If you believe there is an imminent risk of substantial and specific danger to the life, health or safety of individuals, or to the environment, and there is not enough time to make a disclosure using the above procedure, you may make a disclosure to the public only if:

Requests for Advice

Section 8 of PIDWA allows an employee who is thinking about making a disclosure of wrongdoing to seek advice from their immediate supervisor, chief executive, or the Public Interest Disclosure Commissioner. In addition, an employee who does ask for advice must not suffer any reprisal as a result of seeking this advice.

So what kind of advice should you ask the Public Interest Disclosure Commissioner about? It depends on the situation. For example, we have responded to requests about whether PIDWA can apply to employee-employer matters in addition to public interest ones. Our overall view is that there are other more appropriate avenues to deal with employment relationships. We have also looked at what certain provisions mean, in order to determine if the commissioner can investigate in a given set of circumstances.

It is always best to ask for advice if you are unsure about something in PIDWA. But treat the advice as a guide to make your own decision about what you think is a suitable course of action.

Accountability

Building Relationships

Our primary method of building relationships in 2017 was through our file work. Given that we only had a few files open, this interaction was minimal. We will be working in 2018 to connect with employees, their unions and public entity senior officials to raise awareness about PIDWA.

Outreach activities in 2017

Other than through our file work, we did not undertake outreach activities under PIDWA in 2017. In the summer of 2017, however, we developed a comprehensive outreach strategy designed to raise awareness about the rights and obligations in the laws under which we operate. As previously noted, we recognize there is a need to raise awareness within public entities to ensure disclosures of wrongdoing are being addressed properly by public entities in accordance with PIDWA's purposes. In the strategy, we identified the following outreach goals for PIDWA that we intend to deliver on over the next several years:

- increase knowledge, understanding and comfort with PIDWA amongst employees of public entities, so they feel comfortable and safe in bringing a disclosure forward
- advocate for the development of procedures within government to manage PIDWA disclosures
- encourage public entities to educate their employees in regard to PIDWA and its protections
- strengthen relationships with public entities and their employees
- build on existing materials and previous outreach work on PIDWA.

STORIES ABOUT OUR WORK

▶ Whistle blower revelations lead to finding of wrongdoing at Whitehorse airport

IN 2015, THE PUBLIC INTEREST DISCLOSURE COMMISSIONER RECEIVED THE FIRST-EVER DISCLOSURE UNDER YUKON'S WHISTLE BLOWER LEGISLATION, THE *PUBLIC INTEREST DISCLOSURE OF WRONGDOING ACT* (PIDWA). PIDWA HAS ONLY BEEN IN PLACE SINCE JUNE 15 OF THAT YEAR. THE ENSUING INVESTIGATION LED TO 11 RECOMMENDATIONS TO REMEDY WRONGDOINGS.

Erik Nielsen Whitehorse International Airport is one of the most familiar pieces of public property in the territory. Thousands of Yukoners cross its thresholds in order to leave the city or the territory, arrive home, or



Photo credit: Government of Yukon

greet visitors. In 2015, an individual approached the Public Interest Disclosure Commissioner (PIDC) with concerns that the Department of Highways and Public Works (HPW) was committing wrongdoings in its leasing and development work at the airport. This led to a complex, two-

year investigation by our office, our very first under PIDWA.

In general, PIDWA defines wrongdoing as breaking a law or regulation (either territorial or federal); creating danger to people or the environment; gross mismanagement of public funds or public assets; or counselling someone to do any of the above.

Safety at the airport was never a concern. Instead, the allegations were in regard to contracting and development taking place at the airport and the way that the work was managed by the government, including whether the development was properly approved, the way change orders were handled, the use of gravel, the removal of dumped material, and the burial of stockpiled concrete rubble.

During the course of the investigation, the PIDC Office looked at more than 1,000 pages of government documents, reviewed legislative and



other material, and interviewed 20 people. As PIDWA requires, careful steps were taken to protect the identity of the whistleblower and to ensure everyone who took part in the process was treated with procedural fairness.

Photo credit: Government of Yukon



The investigation concluded that some of the allegations of wrongdoing were unfounded but did find two wrongdoings. These wrongdoings led to these instances of gross mismanagement of a public asset:

1. The PIDC found that the contractor's unauthorized lot clearing, haul road building and dumping activities contravened federal aviation legislation. By failing to take action to address this, HPW put its Transport Canada airport operating certificate in jeopardy.
2. The PIDC also found HPW was not fair and equitable in the way it managed its aviation leases (by failing to enforce the requirement that leaseholders meet the purpose set out for leasing the airport property) nor did it follow the rules established to manage the airport.

The final report, more than 100 pages, was delivered to the department in early December 2017.

Four recommendations were made in regard to the wrongdoing associated with airport lot clearing, haul road building and waste material dumping:

1. HPW should evaluate the way it communicates with leaseholders and/or their agents and make any necessary changes to ensure they understand that no development can take place until all steps in the airport lease and development process are followed and all necessary approvals are obtained.

2. During this communications process, HPW should inform leaseholders and/or their agents that failure to follow the steps is a violation of the Canadian Aviation Regulations and puts the airport's operating certificate at risk.
3. HPW should require leaseholders and/or their agents to sign a form acknowledging that they understand the rules and the consequences for not following them.
4. HPW should provide the PIDC with a copy of the changed procedures and any documents developed to support compliance with these recommendations. This should include a plan to train employees so they understand acting in the public interest is central to their job. The training plan should require employees to review and acknowledge this aspect of their work at least once every year.

Seven recommendations were made in regard to the wrongdoing associated with lease management.

1. HPW should clearly articulate the purpose for making airside airport property available to the public for lease or license.
2. HPW should evaluate the airport lease and development process to determine if it is comprehensive and clear enough to a) meet the purpose of leasing/licensing as it has been articulated, and b) guide applicants and HPW aviation branch officials through the steps of acquiring and maintaining leases/licenses.

3. HPW should evaluate the generic airport lease, supplemental agreement and license documents to ensure that they clearly align with the purpose, as it has been set out.
4. HPW should evaluate all active airside airport property leases, supplemental agreements and licenses to ensure, from the perspective of efficient public asset management, that the purpose is being met. If not, corrective action should be undertaken where necessary.

5. HPW should modify, as necessary, the airport leasing and development process, including associated leases, supplemental agreements and licenses, to ensure that the purpose is achieved.
6. HPW should provide training to all aviation branch employees on the airport leasing and development process, so that they understand the purpose for leases/licenses, and are able to create and enforce legal interests in airside airport property.
7. HPW should provide the PIDC with any documents that show how the

previous six recommendations have been implemented.

HPW has accepted all the recommendations and has informed the PIDC that work has already begun to address the wrongdoings that were found. We would like to note that HPW staff were very cooperative throughout the investigation.

The very first investigation that took place under PIDWA is now complete and is resulting in benefits to the public and protection of the public interest, which is what the legislation was put in place to do.

HOW WE MEASURED UP IN 2017

Skills development

- Some of our staff attended a workshop on investigating and conducting administrative investigations.
- The Public Interest Disclosure Commissioner and one of her staff attended the national public interest disclosure meeting attended by her counterparts from across Canada, hosted by the New Brunswick Ombudsman’s Office in September in St. Andrews, New Brunswick.

Activity reported by public entities

All 24 public entities in Yukon reported to us before this annual report was compiled.

All of them, except for Yukon Housing Corporation, required a reminder

letter to report to us. The Department of Economic Development is the only public entity that had any disclosures to report (1).

A list of the public entities subject to PIDWA is below:

- Department of Community Services
- Department of Economic Development
- Department of Education
- Department of Energy, Mines and Resources
- Department of Environment
- Department of Finance
- Department of Health and Social Services
- Department of Highways and Public Works
- Department of Justice

- Department of Tourism and Culture
- Executive Council Office
- French Language Services Directorate
- Office of the Chief Electoral Officer
- Office of the Child and Youth Advocate
- Office of the Yukon Legislative Assembly
- Public Service Commission
- Women’s Directorate
- Yukon College
- Yukon Development Corporation
- Yukon Energy Corporation
- Yukon Hospital Corporation
- Yukon Housing Corporation
- Yukon Liquor Corporation
- Yukon Workers’ Compensation Health and Safety Board.



Files opened in 2017 by public entity					Recommendations	
Public Entity	Number of files				Formal*	Not yet implemented (includes from prior years)
	Reprisal	Wrongdoing	Advice	Total		
Department of Energy Mines and Resources		1		1		
Department of Economic Development			1	1		
Department of Highways and Public Works					11	11

*Formal recommendations are those made by the Public Interest Disclosure Commissioner in a formal Investigation Report issued in 2017.

PIDWA - 2017 activity	
Resolved at Intake - no file opened	
Non-jurisdiction	2
Referred-back	0
Requests for Information	2
Informal complaint resolution	0
Total	4
Advice files opened	1
Comment files opened	0
Disclosure files opened	1
Reprisal files opened	0
Totals	2
All files opened in 2017	2
Files carried over from previous years	3
Files closed in 2017	4
Files to be carried forward	1



Photo by Alistair Maitland Photography





Yukon
Ombudsman



Yukon
Information
and Privacy
Commissioner



Yukon
Public Interest
Disclosure
Commissioner

OFFICE OF THE OMBUDSMAN, INFORMATION AND PRIVACY
COMMISSIONER, AND PUBLIC INTEREST DISCLOSURE
COMMISSIONER

Financial Reporting

The budget for the Office of the Ombudsman, Information and Privacy Commissioner (IPC) and Public Interest Disclosure Commissioner (PIDC) covers the period from April 1, 2017 to March 31, 2018.

Operations and maintenance (O&M) are expenditures for day-to-day activities. A capital expenditure is for items that last longer than a year and are relatively expensive, such as office furniture and computers.

Personnel costs comprise the largest part of our annual O&M budget and include salaries, wages, and employee benefits. Expenses described as “other” include such things as rent, contract services, supplies, travel and advertising.

For accounting purposes, capital and personnel expenses are reported jointly for the office. The “other” budget is the operational costs required for the

Ombudsman to carry out the mandated responsibilities under the *Ombudsman Act*, the IPC to carry out the mandated responsibilities under the *Access to Information and Protection of Privacy Act* and the *Health Information Privacy and Management Act* (HIPMA), and the PIDC to carry out the mandated responsibilities under the *Public Interest Disclosure of Wrongdoing Act*. These costs are required to be accounted for separately under law and, therefore, are reported separately.

Our personnel budget increased slightly in 2017/18 for two reasons. The first was to provide staff with a small increase in line with public servants. The second was to create a new position to support the extra work load generated by HIPMA. There was a small decrease to the Ombudsman “other” budget.

The budget from 2016/17 is provided below for purposes of comparison.

2017/18 Budget

Personnel	Joint	\$	927,000
Capital	Joint	\$	5,000
Other	Ombudsman	\$	104,000
Other	IPC	\$	131,000
Other	PIDC	\$	18,000
Total		\$	1,185,000

2016/17 Budget

Personnel	Joint	\$	841,000
Capital	Joint	\$	5,000
Other	Ombudsman	\$	109,000
Other	IPC	\$	131,000
Other	PIDC	\$	18,000
Total		\$	1,104,000