Yukon Ombudsman

Yukon Information and Privacy Commissioner

Yukon Public Interest Disclosure Commissioner

2021 ANNUAL REPORT

Protecting the public's interest in fairness, accountability and information rights during challenging times

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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.

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Page 40: Cathie Archbould

Diane McLeod-McKay

Yukon Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner

I am pleased to issue my Annual Report for 2021 for the Offices of the Ombudsman, Information and Privacy Commissioner (IPC), and Public Interest Disclosure Commissioner (PIDC).

The mandates for the offices are found in the *Ombudsman Act*, the *Access to Information and Protection of Privacy Act* (ATIPP Act), which was repealed and replaced with a new *Access to Information and Protection of Privacy Act* (ATIPPA) on April 1, 2021, the *Health Information Privacy and Management Act* (HIPMA), and the *Public Interest Disclosure of Wrongdoing Act* (PIDWA).

2021 Brought Many New Privacy Challenges

At the end of 2020, many of us thought we had seen the worst of the pandemic restrictions and that these restrictions were firmly in the rear-view mirror. As it turned out, 2021 had much more in store for us, as COVID-19 continued to rear its ugly head, which led to numerous restrictions that affected us all and which also brought to the fore numerous novel privacy issues.

- The emergency measures implemented by the Yukon government to address the pandemic continued into 2021.
- In early January 2021, vaccines began rolling out across the territory.
- In March 2021, the Yukon government's vaccine booking app was implemented. Our office reviewed the privacy impact assessment (PIA) for this application and made recommendations to the Department of Health and Social Services concerning its use.
- In May 2021, when it was reported by the Yukon government that nearly 75% of Yukoners had received their first dose of the vaccine, it announced that Yukoners and non-Yukoners who could prove that they'd received at least one dose of vaccine would not be required to self-isolate on entering the Yukon. This led to the development and implementation of a process to verify vaccine credentials at the border. We were provided with and reviewed the PIA associated with this process and made numerous recommendations to ensure compliance with ATIPPA and HIPMA.
- In August 2021, the Yukon government emergency measures ended.
- In September 2021, the Yukon government announced that together with Health Canada they were working on a proof of vaccination credential to be used by Yukoners for international travel purposes. We were provided with and reviewed the PIA for this vaccine credential and made numerous recommendations to ensure compliance with ATIPPA and HIPMA.
- In October 2021, the Yukon government announced that it would be implementing a mandatory vaccine verification requirement for public servants and health care workers. Once this initiative was announced, we received numerous complaints under ATIPPA, and investigated the same.
- In November 2021, the increased spread of COVID-19 in the territory led to the emergency measures being re-instated and resulted in the Yukon government announcing that it would be implementing a vaccine verification credential for Yukoners to access non-essential services. As this process did not involve public bodies or health care custodians, we did not review a PIA associated with this requirement.
- Later in November, the Yukon government announced that its vaccination verification credential was available for download. We reviewed and commented on the PIA associated with this credential.
- November 30, 2021 was the first day that public servants and health care workers were required to show proof of at least one dose of the vaccine for employment purposes. When this occurred, our investigation into allegations of non-compliance with ATIPPA was in progress.

These issues, and others related to the pandemic that came before us in 2021 kept us very busy.

Also, on April 1, 2021, the new ATIPPA was brought into force. Prior to that occurring, we had been reviewing a number of documents provided to us by the ATIPP Office in the Yukon government, as it prepared for the implementation of that Act. We had also been working on our own ATIPPA implementation plan, which included developing resources for public bodies in anticipation of the new powers of the IPC under the Act.

Although we did see an increase in different kinds of matters before the IPC, overall our caseload under all four Acts in 2021 was less than in 2020. We opened 103 cases in 2021, which is down from the 166 opened the year prior. However, we were able to close 88 cases, and at the end of 2021 we carried forward 170 files that remained open by the end of the year. The bulk of our work was under the IPC mandate where we opened 82 files.

As indicated in my 2020 Annual Report, the office's current staffing complement is being challenged to manage the size of our workload. The new ATIPPA has many more responsibilities for the IPC to fulfill. I have been monitoring the impact this new legislation is having on our ability to meet the mandated obligations of the Ombudsman, IPC and PIDC, and while we are doing our best to manage our case load, we are experiencing some challenges in meeting the timelines associated with our obligations under the new ATIPPA and HIPMA. We are also taking longer to issue reports under the *Ombudsman Act* and PIDWA. I anticipate that in the near future we will need additional human resources if we are to effectively meet all our mandated obligations and deliver quality services.

Update on goals

In 2018, when my appointment was renewed for a second term, I identified eight goals that I would deliver on during my second term. Below is the update on meeting these goals.

1. Sufficiently skilled office to deliver on mandates

In my last annual report, I stated that I had delivered on my goal to ensure my office is sufficiently skilled to deliver on our mandates. As of the end of 2021, I am still of the view that I have met this goal. However, due to the considerable impact that innovation through the use of technology is having on privacy rights in Canada and internationally, I expect that I will need to build up the skills within my office to ensure we can investigate or review the use of technology to process personal information, including through the use of artificial intelligence.

7. Deliver on my outreach strategy

In 2021 we did a significant amount of outreach. Some examples of this work follow.

- On Ombuds Day, the Ombudsman wrote an op-ed to highlight the work of the Ombudsman and to highlight issues around fairness and vaccine credentials. This followed a joint letter from Ombuds across Canada calling for governments to take a cautious approach to vaccine verification systems.
- The Ombudsman tabled a report that she co-wrote with the BC Ombudsperson and Information and Privacy Commissioner, calling on the Yukon government and Government of British Columbia to adopt a framework for responsible use of artificial intelligence in decision-making in the public sector.
- The IPC undertook a number of initiatives to increase the knowledge of the public about their rights under access and privacy laws. These initiatives included issuing joint letters with IPCs across Canada on a number of topics such as vaccine passports and the need for governments to uphold privacy and access to information rights given the impact COVID-19 was having on these rights.
- The IPC and the Privacy Commissioner of Canada co-wrote an op-ed to create greater awareness of privacy laws affecting businesses and other organizations. This stemmed from the new requirement that these businesses and organizations verify vaccine status for non-essential services.
- The IPC wrote an op-ed to inform Yukoners about the new ATIPPA and their rights thereunder.
- The IPC issued a tool kit for use by small health care custodians and a number of other guidance documents on a host of topics, including cybersecurity risks and electronic logging and auditing.

Updated information about my progress in meeting the remaining six goals can be found in the Ombudsman, Information and Privacy Commissioner, and Public Interest Disclosure Commissioner Annual Reports for 2021, included in this document. Other specific information about the year 2021 for each of my mandates can be found within those reports as well.

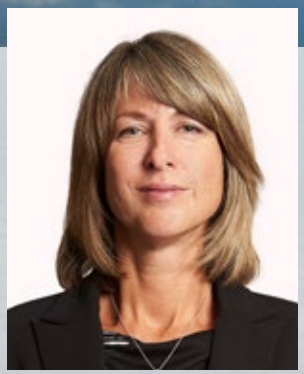
I hope you find the information within the reports informative.

Kind regards,

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

Yukon
Ombudsman

2021 ANNUAL REPORT OF THE YUKON OMBUDSMAN



The Honourable Jeremy Harper
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 2021.

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

Kind regards,

Diane McLeod-McKay,
Yukon Ombudsman

OVERVIEW OF OUR WORK

In 2021, we opened 19 case files under the *Ombudsman Act*, which is similar to the total number of files opened in 2020, which was 18. However, there was a significant increase in requests for information from the office of the Ombudsman in 2021. There were 92 requests, whereas there were only 47 in 2020. The majority of the files opened in 2021 were resolved by our informal case resolution team with just one file opened as a formal investigation.

There were a number of complaints that the office of the Ombudsman looked into in 2021. We received complaints on a broad array of topics, including:

- being refused reimbursement for medical travel;
- concerns about the safety of a child who was involved with Family and Children's Services (FCS) and about communications with FCS about these concerns;
- a refusal to renew a commercial fuelwood license and cutting permit;
- a delay in appointing an appeal board under the *Animal Health Act*;
- remuneration of volunteer fire fighters;
- the social housing waitlist; and
- screening applicants for a job competition.

We also received one complaint stemming from the COVID-19 pandemic about the mandated collection of personal information by restaurants and bars for the purposes of contact tracing associated with the pandemic.

Information about these stories can be found on pages 6 to 11 of this report.

As indicated, just one complaint was opened as a formal investigation file.

Hidden Valley Elementary School investigation

On October 25, 2021, I publicly announced that our office had received a complaint from a parent of a child at Hidden Valley Elementary School. The complainant alleged that the failure by officials and employees of the Department of Education to inform parents of children attending the school until 21 months had passed after learning about the abuse of a student by an educational assistant at the school was unfair to students of the school and their parents. The complainant was of the view that this failure meant that other alleged child victims who have since been identified did not receive the necessary parental and professional supports in a timely manner.

By the time we received this complaint, the media had been reporting on parent concerns about this matter that began in July 2021 and continued into the fall of the same year. Given the public interest associated with this complaint, I decided to launch a formal investigation into the matter. The complainant and the public were informed of this fact on October 25.

In November, I had the opportunity to attend a virtual meeting with parents, held on the Zoom platform, which was hosted by Department of Education officials. During that meeting, I explained the Ombudsman's investigative process and what the role of the Ombudsman is.

Following that meeting, I began my investigation and issued notices to produce to the Departments of Education, Justice, and Health and Social Services. I also issued a notice to produce to the Public Service Commission, the RCMP, the Public Prosecution Service of Canada, the Yukon Educational Professional Association, and the Hidden Valley Elementary School Council. In response, we received thousands of records that were provided by these organizations during the winter of 2021 and into the spring of 2022. At the end of 2021 and into the spring of 2022, we were still evaluating all the evidence and building a chronology of events.

Performance targets

In my 2020 Annual Report, I reported that we were facing challenges in meeting our performance targets for Ombudsman investigations. We had exceeded our performance targets for closing nine of our files within one year or within 90 days as is applicable. I am pleased to report that we did much better in 2021, with just 4 files exceeding the target. This is positive.

Ombudsman goes to court...X 2

In my 2020 Annual Report, I reported that in December 2020 the Yukon Ombudsman filed a petition with the Supreme Court of Yukon seeking the following declarations by the court.

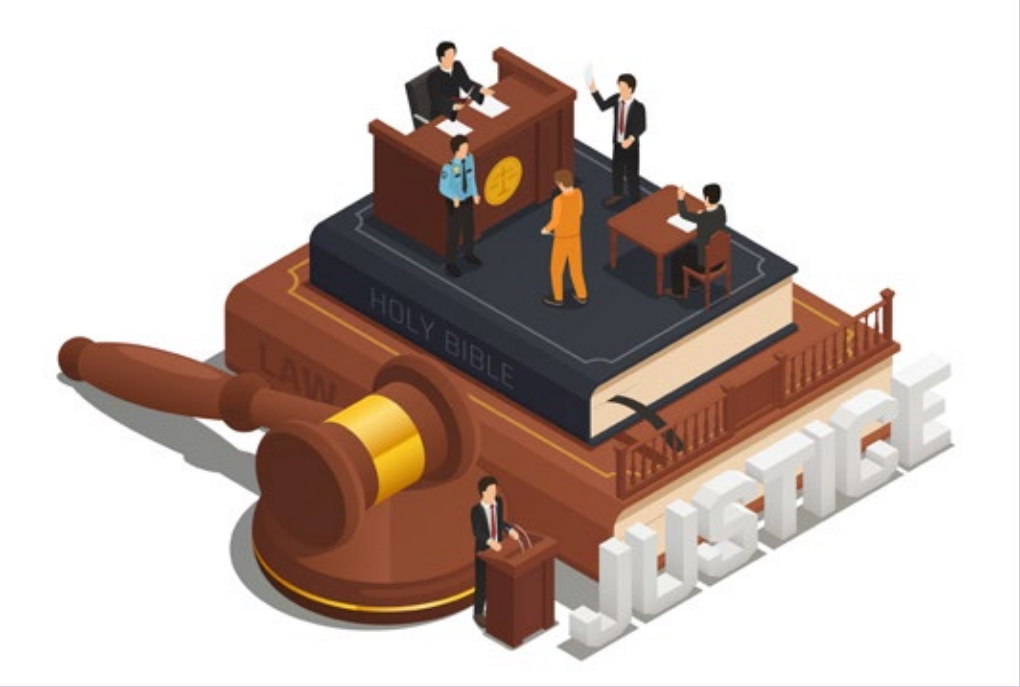
(a) *The Ombudsman's jurisdiction to investigate an authority includes a right to question the authority directly, and the Ombudsman is not required to communicate through an authority's legal counsel;*

(b) *The Ombudsman has the jurisdiction to require the disclosure of full and unredacted documents from a person or authority, except (i.) to the extent sections 18 and 20 of the Ombudsman Act provide otherwise, and (ii.) to the extent a court may, upon application of the authority, order otherwise; and*

(c) *The Ombudsman's jurisdiction to investigate complaints related to Child and Family Services includes a right to access documents in the possession of the Department of Health and Social Services and Director appointed under the Child and Family Services Act (CFSA), which right is not precluded by sections 178 and 179 of the CFSA.*

The petition stemmed from some significant challenges we experienced in investigating a complaint made by a father who alleged that the Family and Children's Services Branch of the Department of Health and Social Services had failed to follow its procedures and failed to take action, thereby creating a risk of harm to his child and himself. The petition was filed with the court on December 11, 2020.

Our last appearance in court was on June 23, 2021. By the end of 2021 we had not yet received the court's decision on our application. This is unfortunate given that we have been unable to investigate the allegation that led to the court application because we have not been able to obtain access to the information required to conduct the investigation.



Also in 2021, the Ombudsman received two complaints involving the Yukon Human Rights Commission (YHRC). The YHRC is not expressly identified as an 'authority' under the *Ombudsman Act.* The definition of an authority in Schedule A of the Act includes the following.

> *2 A person, corporation, commission, board, bureau, or authority who is or the majority of the members of which are, or the majority of the board or board of directors of which are*
>
> (a) *appointed by an Act, Minister, or the Commissioner in Executive Council;*
>
> (b) *in the discharge of their duties, public officers or servants of the Yukon; or*
>
> (c) *responsible to the Government of the Yukon.*

The French version of this provision states as follows.

> *2 Un particulier, une personne morale, une commission, une régie, un conseil, un bureau ou une autorité qui est, ou dont soit la majorité des membres, soit la majorité des membres du conseil de gestion ou du conseil d'administration sont :*
>
> (a) *nommés par une loi, par un ministre ou par le commissaire en conseil exécutif;*
>
> (b) *dans l'exercice de leurs attributions, fonctionnaires publics ou employés du gouvernement du Yukon;*
>
> (c) *responsables devant le gouvernement du Yukon.*

On receiving the complaints, we notified the YHRC about them and informed the commisson of our position that the Ombudsman has jurisdiction to investigate the matter as, in our view, the commission is captured by this provision. After exchanging correspondence with the YHRC and coming to the conclusion that we could not agree on the Ombudsman's jurisdiction to investigate the YHRC as an authority under the *Ombudsman Act*, we jointly agreed to, by way of Stated Case, ask the Supreme Court of Yukon for a decision on the matter.

We filed the petition on September 21, 2021. Our matter was heard in court on November 19, 2021. Following our court appearance, the judge hearing the matter allowed us to issue additional submissions to address some questions raised by the judge. We filed our additional submissions on December 17, 2021, and the YHRC filed theirs on January 12, 2022. The judge issued her decision on April 11, 2022. It can be found here.

The opinion rendered by the Judge is as follows.

> (a) *The Yukon Human Rights Commission is not an authority pursuant to s. 2 (a) of Schedule A of the* [Ombudsman] *Act; and*
>
> (b) *The Yukon Human Rights Commission is a public officer pursuant to s. 2 (b) of Schedule A of the* [Ombudsman] *Act.*

This is the first time these provisions in the *Ombudsman Act* have been judicially considered in the Yukon. Receiving the court's opinion about the interpretation of these provisions is very useful as we now have clarity from the court on its interpretation.

Update on goals

7. to deliver on my outreach strategy to increase knowledge amongst the public, within government and public organizations...on the mandates of the office and to inform the public about their rights.

As indicated in my opening message in this document, issues related to COVID-19 impacted the work of my

offices, including the Ombudsman. As such, my focus of communications in 2021 was related to COVID-19 related activities that were being undertaken by the Yukon government.

Vaccine verification credentials and fairness

The move by governments across Canada to develop, and later implement, vaccine credential systems led to the development of a joint guidance document by the Canadian Council of Parliamentary Ombudsman (CCPO).

The purpose of our guidance was to highlight the risks to fairness in the delivery of public services that may arise if, in order to access a public service, an individual must show proof of vaccination. The CCPO jointly recommended that government take a "cautious approach that places fairness at the heart of any potential vaccination certification system applied to public services". As part of our guidance document, we developed a set of fairness principles that government should take into account when considering or developing vaccine certification systems. This document was released publicly in May 2021, prior to the Yukon government's announcement in September 2021 that it was working with Health Canada to create a proof of vaccination credential to be used by Yukoners for international travel purposes. The guidance document can be found here.

Given the momentum generated around the development of these vaccine verification credential applications by governments across Canada, including the Yukon government, I decided that to mark Ombuds Day, which occurred on October 14, 2021, I would write an op-ed for Yukon newspapers to inform Yukoners about the guidance and provide them with information about the risks to fairness in the delivery of public services that could result from the use of these systems. The op-ed ran in several of Yukon's newspapers on October 15, 2021. It can be found here.

5. to enhance fairness in authorities, through the use of proactive measures.

As indicated in my 2020 Annual Report, my office in collaboration with other Ombuds offices in Canada developed the *Fairness by Design* tool. The purpose of the tool was to inform authorities subject to Ombuds laws about what 'fairness' under these laws means. The tool included a checklist for use by authorities to assess the fairness of programs and services. In 2021, we started work on version 2.0 of the tool after piloting the first version for a little more than a year. Based on our experience using the tool, we saw an opportunity for it to be improved. This work was ongoing at the end of 2021.

Review of the *Ombudsman Act*

In my 2020 Annual Report, I indicated that we had started drafting proposed amendments to the *Ombudsman Act* but were waiting for the court decision in the first case noted above, before finalizing them. Given that we had not received this decision by the end of 2021, our work on these amendments will continue in 2022.

Concluding remarks

In the *What we worked on in 2021* section of this report, you will find more information about our investigations and recommendations. You will also find additional detail about our performance in carrying out our duties under the *Ombudsman Act*, in the *How we measured up* section of this report.

Diane McLeod-McKay
Ombudsman

WHAT WE WORKED ON IN 2021

EXAMPLE 1

We received a complaint from a person who believed she had been unfairly screened out of a competition for a job within the Department of Education (the authority), even though she met all the essential qualifications.

The complainant had spent most of her life working within the Yukon public school system. After being screened out of the job competition, she emailed the Department of Education to ask which essential qualification(s) the hiring panel felt she had not met. The department told her that her resume did not clearly or fully demonstrate two of the essential qualifications. Both had to do with experience in working with First Nations. The department also told her that "…the screening board cannot make any assumptions about candidates' applications. If candidates do not clearly demonstrate necessary experience in the application and a board member believes they do have this experience; these candidates are still screened out."

Considering her extensive experience dealing with Yukon First Nations spanning more than two decades, the complainant believed this was evidence of unfairness by the Department of Education in the hiring process.

We reviewed the authority's screening process and the process for selecting a hiring panel and found they were comprehensive, well-defined, balanced, and included safeguards to ensure fairness. We also found that the screening board's decisions in respect of the candidates were consistent with the information in their resumes and cover letters.

Although we did not find any unfairness, we recommended that the authority develop a procedure to ensure it can demonstrate that

the hiring panel members reached a consensus in respect of the screened candidates. This recommendation was accepted by the authority.

We also made two observations to the authority. The department may want to consider defining the terms "stated" and "demonstrated" in a written procedure, including examples, to ensure everyone on the hiring panel understands what these terms mean and how to apply them.

As well, the authority may want to consider developing a written procedure for determining when to anonymize resumes instead of having hiring panel members sign a conflict of interest and confidentiality agreement document. We noted that in some circumstances it may be appropriate to use both measures to ensure greater transparency and minimize risk of bias or perceived bias.

EXAMPLE 2

We received a complaint from an individual who had applied for social housing through the Yukon Housing Corporation (YHC) and had been on the waitlist for two years, but had not received housing. She knew of others who had applied for housing after she did and had already received housing, which she felt was unfair.

This investigation allowed us to thoroughly examine the process that YHC uses to place and prioritize social housing applicants on a waitlist. We learned that YHC uses a points rating system, with clear, objective criteria, and which does not allow for discretion. An individual with the most points on a waitlist is offered housing when a unit becomes available.

Applicants in several priority groups (for example, *Medical Accommodation* or *Victims of Domestic Violence*) receive extra points according to criteria documented in policy and this has the effect of giving them priority.

The authority, YHC, keeps diligent case notes of all decisions made and records of documentation relevant to an individual's file. Our investigator was able to determine the exact dates that certain decisions were made with respect to the complainant's file, and, through interviews, confirmed why decisions were made. We found that appropriate procedures were followed regarding the complainant's application and that several factors contributed to the time she spent on the waitlist, but we did not find any unfairness.

We did note that although applicants are assigned an additional point for every 12 months spent on the waitlist, this is not always assigned promptly, which might produce an unfairness, as the applicant will not have the benefit of this extra point for the full 12 months. We recommended an adjustment to this process, which the authority accepted. We also noted that while YHC has written procedures, these did not speak to current practices. After our recommendation, the authority agreed to update them as appropriate. We confirmed that our recommendations in this case were implemented.

In addition, because it is rare for YHC to reject an application for social housing, the waitlist is rather long. For those applicants who fall outside of what the YHC views as a "core need" (those with the highest priority), other avenues (such as applying for a housing subsidy and securing their own accommodation) may be more appropriate and may serve to provide housing more quickly than staying on the waitlist. We made an observation in this regard and the YHC agreed to improve its communications about other options available.

EXAMPLE 3

In early October 2020, we received a complaint from a volunteer firefighter, raising concerns that honoraria owed to him by the Fire Marshall's Office in the Department of Community Services (the authority in this case) had not been paid since June 2019.

An honoraria of $22.00 is paid to volunteer firefighters for each training session attended. They are also paid an hourly rate for weekend training events and for responding to incidents.

During the course of this investigation, our office had the opportunity to research the Yukon Fire Service Incident Reporting System, which tracks information required to ensure full and appropriate honoraria are paid to volunteers and to ensure that they have completed the requirements necessary for incident response.

When a person becomes a volunteer firefighter, a number of requirements must be completed, including a Standard First Aid certification and a Firefighter Medical Clearance. Once these are complete, the volunteer is manually assigned an active status in the reporting system.

Honoraria are paid automatically to volunteers based on their attendance records, provided they have been assigned an active status. The authority explained that the complainant's medical certification had expired and when the authority became aware of this, the complainant's status was switched to inactive and the automatic payment of honoraria ceased.

Given that the complainant attended his training sessions in good faith, and that the authority did not notify the complainant that his payments would be stopped, or why, or what could be done to prevent this problem, it was our view that the complainant ought to

be reimbursed for all honoraria that he had not received. The authority agreed to this.

Importantly, we learned that the local dispatch system uses the Yukon Fire Service Incident Reporting System to determine which volunteers it can call. However, the system does not automatically switch a status to inactive. Instead, this is a manual operation that happens infrequently. If the reporting system stores inaccurate information, the end result may be that volunteers with expired qualifications are being sent to live incidents. This is problematic, as it jeopardizes the safety of volunteers, and creates liability for the authority, among other issues.

To prevent a recurrence, to ensure volunteers are treated fairly, and to ensure that only qualified individuals are responding to incident calls, we recommended that the authority implement a means of regularly tracking the status of its volunteers.

We also asked that the authority work with its volunteers to ensure they are aware when their qualifications will expire, what is expected and required of them, and what would happen should the qualifications lapse. In addition, we recommended that the authority provide written confirmation to volunteers upon receipt of required qualifications. We also asked that the authority review the qualifications of its active volunteers as soon as possible, since it is urgent to ensure that only properly qualified volunteers respond to incidents.

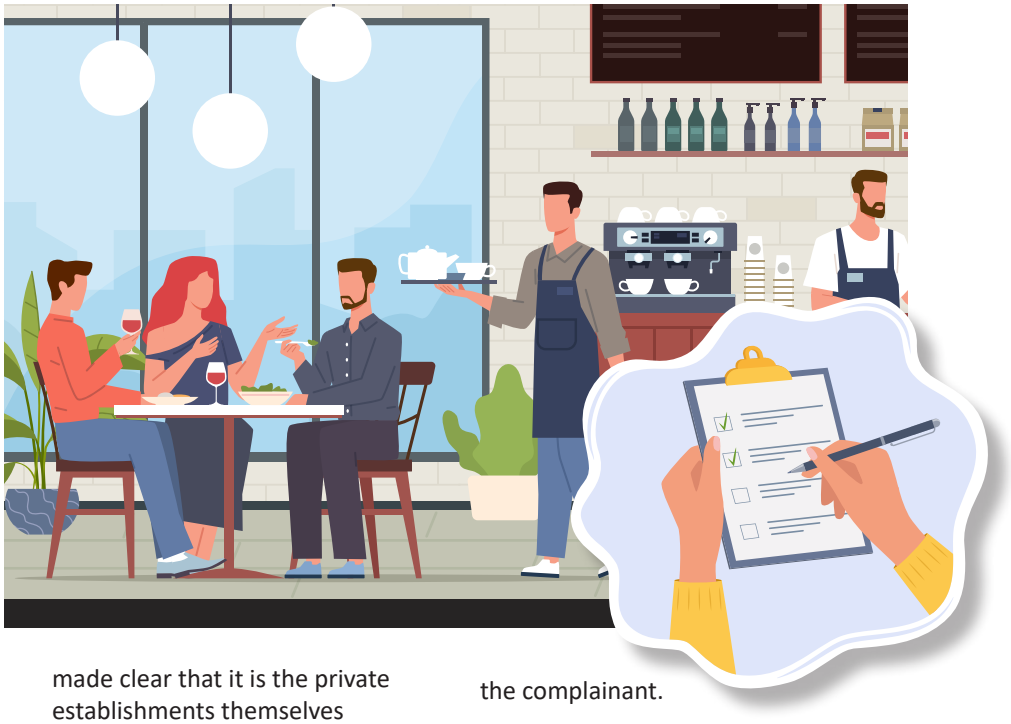
The authority agreed with and implemented all recommendations. The complainant was pleased with the outcome.

EXAMPLE 4

We received a complaint about the mandated collection of personal information by restaurants and bars, beginning on December 7, 2020, as required by the Department of Health and Social Services (HSS), which is the authority in this case.

The complainant raised a number of concerns.

- They believed it was unclear what legal authority HSS was using for its mandate that restaurants and bars report personal information on request.
- They complained that HSS had not provided establishments with robust guidance about the collection of personal information and had set establishments up for possible non-compliance with applicable federal privacy legislation and possible inadequate handling of the complainant's personal information, which could have resulted in unfairness.
- Although the information was being collected by local establishments, the sign-in sheet bore a Yukon government watermark and it was not made clear that it is the private establishments themselves that are collecting personal information, not the government, and this lack of transparency could be unfair.



Our investigation found that at the time of this complaint, the authority had not provided establishments with sufficient guidance about the collection of personal information, resulting in unfairness. By requiring that establishments collect this information, but without providing clarity on their obligations under applicable privacy legislation, the authority created a risk of non-compliance by these establishments.

We also found that establishments were eventually provided with revised guidance, which was also shared publicly. The guidance was developed after working with the Information and Privacy Commissioner compliance review team and includes sufficient information to promote compliance with applicable privacy legislation and appropriate safeguarding of personal information of members of the public, including the complainant.

In regard to the question of legal authority, HSS explained it is provided in the *Civil Emergency Measures Act* (CEMA) and an associated Ministerial Order. We were able to share this with the complainant.

The authority also acknowledged that the watermarking of the sign-in sheet template presented a transparency issue. We confirmed that the subsequent sign-in sheet template had the watermark removed.

Finally, we discussed with HSS the eventual termination of this public health measure, making an observation that if the circumstances that would lead to termination are not clearly set out, it may present an unfairness if

the measure affects individuals when it is no longer necessary, or without a clear purpose. We asked that HSS ensure that there is a continual evaluation of the need for this public health measure, and that conditions for the termination of this measure be developed.

In our view, the concerns of unfairness brought to us by this complainant were addressed in the ways described above.

EXAMPLE 5

We received a complaint in March 2021 that the Department of Energy, Mines and Resources (EMR), the authority in this case, had failed to appoint an appeal board within a reasonable time frame to hear an appeal under the *Animal Health Act*, resulting in unfairness.

The complainant said the Yukon government ordered him in July 2020 to destroy his 17 goats after they tested positive for a particular bacterium. This was necessary because of the Sheep and Goat Control Order 2018-001, in place since 2018 and in effect at the start of 2020.

The complainant complied with the order to destroy his goats but was unsatisfied with the monetary compensation offered by the government for their destruction. He inquired with EMR about an appeal and was advised that the appeal process and application forms were not yet finalized.

In September 2020, the complainant submitted an appeal to EMR. Despite having followed up on numerous occasions, and after waiting for 23 weeks, the authority had yet to appoint an appeal board to hear his case. In his view, this was a contravention of EMR's obligations under the *Animal Health Act*.

After having reviewed the relevant legislation, as well as the initial documents provided by both the complainant and the authority, our investigator found that there appeared to be no discretion under the legislation for the appeal board to award compensation that exceeds the maximum amount, which is what the government had offered to the complainant. At that point, the complainant decided to withdraw the complaint, as he no longer felt his interests would be served by pursuing it.

We did follow up with the authority with several observations.

First of all, because the complainant had been offered the maximum allowable compensation award, it was unclear whether the department had authority to accept an appeal on the grounds submitted. We also noted that it appears the complainant was given incorrect or incomplete information on a number of occasions and had to follow up on his own to receive status updates. From a fairness perspective, it is reasonable for individuals to expect a clear process and clear timelines for an appeal. The information we received indicated that the department's handling of the appeal did not meet this expectation, and as a result may have been unfair. We suggested that the department consider developing and implementing written procedures and training materials to ensure that staff are familiar with appeal processes and timelines, and are equipped to respond to enquiries accurately, completely and in a timely fashion.

In regard to the delay in appointing an appeal board, the decisions and the implementation strategy relating to Sheep and Goat Control Order 2018-001 date back to 2018. In our view, the department had ample time to anticipate and plan for possible appeals, including having a notice of appeal form drafted ahead of time, and an appeal board already in place.

We suggested that the department consider reviewing all legislation and regulations under its jurisdiction and identify any appeal/complaint mechanisms that exist. Where there is a requirement for an appeal or complaint to be heard by a board or committee, a process should be proactively established, outlining the steps and timelines to hear the appeal or complaint. It is administratively unfair to delay the hearing of an appeal simply because one has not been conducted previously or because no process has been established.

EXAMPLE 6

In May 2021, we received a complaint regarding the Department of Energy Mines and Resources (EMR). The complainant felt that a decision not to renew their commercial fuelwood license and cutting permit was unfair. This decision was made by the EMR Forest Management branch (the authority).

To commercially harvest fuelwood in the Yukon, a business must have both a fuelwood license (also called a timber harvesting licence) and a cutting permit. The fuelwood license provides exclusive rights to harvest wood on a particular plot of land within a designated timber harvest plan area. The cutting permit authorizes the licensee to cut wood on their designated plot within the timber harvest plan area. It also defines what kind of wood can be cut, maximum and minimum harvesting volumes and stumpage fees.

Our investigation found that there was no unfairness in the branch's decision not to renew the license and permit. Instead, the renewal was refused because the complainant did not meet the minimum harvesting requirements required by their permit. In particular, we noted that when the Commercial Timber Harvest Allocation Procedure was implemented in 2017, new conditions were imposed including annual minimum harvesting. The new requirements were communicated to the complainant at the time of their renewal in 2018. The complainant was aware of this requirement as demonstrated by their written request to be exempted from it, which the branch denied.

To meet the complainant's fuelwood needs, the authority confirmed that the complainant may apply for a different category of licence and permit, which has smaller minimum harvesting requirements.

EXAMPLE 7

A complaint of unfairness came to our office in November 2021 in regard to the Family and Children's Services (FCS) branch in the Department of Health and Social Services, the authority in this case. The complaint started out as a concern about an allegation that a neighbour had inappropriately touched the complainant's child. It evolved into concerns and frustration about the quality of responses received from FCS.

FCS had advised the complainant that his ex-partner had made a report about the inappropriate touching back in 2020, which confused him, since he was only hearing about it in late 2021.

After our initial discussion with the complainant, it seemed that his concerns mainly revolved around a lack of information. Our preliminary assessment was that FCS was probably best equipped to address his concerns and help fill in the gaps in his understanding. He was open to this idea but explained that he had been calling and leaving messages for the social worker he had previously spoken with, to no avail. Our office agreed to reach out to the social worker directly and ask them to follow up with the complainant.

Our investigator tried to reach the social worker by phone, but the number listed in the government directory was not functional. The investigator then reached out by email and the social worker agreed to contact the complainant within a few days. After following up with him a few days later, our investigator learned that the social worker hadn't yet reached out to him as had been agreed.

Our investigator emailed the social worker asking for confirmation that they had reached out to the complainant but heard nothing back. After eight days without a response from the social worker, our investigator then reached out to the social worker's manager to discuss the situation and to ask about the lack of response. The manager followed up with the investigator and provided a high-level overview of a recent meeting the complainant had had with FCS. The manager also advised that the number FCS has on file for the complainant was "out of service." The manager's response did not address why the social worker never responded to the investigator's email.

Meanwhile, the complainant met with the RCMP and got the information he needed to alleviate his immediate concerns regarding his child. He agreed that he did not want to pursue the initial complaint any further at this time. However, he remained frustrated with the continued lack of information and contact from FCS, despite his numerous attempts to reach them.

When the investigator told the complainant about the response from the manager that his number was out of service, the complainant was skeptical. He explained he has had the same phone number for more than three years and that FCS never mentioned any issue reaching him before. He also mentioned that he'd left a voice message with a supervisor the previous week and never heard back.

While the initial matter was resolved, our office was not entirely satisfied with the response from FCS and the outcome. We took the opportunity to point out the following items to the manager for their consideration.

- If the social worker was not going to follow up with the complainant as agreed upon, they should have let the investigator know.
- If FCS was having difficulty reaching the complainant because of an incorrect phone number, the investigator would have been happy to assist. (The investigator had no difficulty reaching the complainant at any time.)
- We let the authority know that the complainant was still experiencing difficulties reaching them.

In conclusion, we noted that providing people-centered service is a fairness that our office evaluates, and it is imperative that departments build fairness into their procedures. The *Fairness by Design* document (in particular, Standards 6.5 through 6.9) related directly to the issues experienced by the complainant. This document is available on our website here.

EXAMPLE 8

Between August and November 2021, we dealt with a complaint about the Dawson Medical Clinic (the authority in this case), which is operated by the Community Nursing branch

of the Department of Health and Social Services. The complainant had travelled to British Columbia to receive medical treatment from a specialist. On her return, she completed the required form for a medical travel subsidy. This was denied by Insured Health and Hearing Services (IHHS).

The reason for the denial was that the Dawson Medical Clinic had not provided IHHS with the proper application prior to the complainant's departure from the Yukon. The complainant felt that this delay by the clinic was unfair and came to our office.

In looking into the complaint, we found that the *Medical Travel Regulation* does require that applications for medical travel must be submitted by (or on behalf of) a physician before the individual leaves the Yukon. Sometimes a clinic will book the appointment with the specialist clinic and inform the patient.

In this case, the complainant booked an appointment with a specialist clinic herself, rather than coordinating through the Dawson Medical Clinic. The specialist clinic did not confirm with the Dawson Medical Clinic that this had been done, nor did the complainant.

Our investigator did not find unfairness in this case. We found that if a patient books appointments with a specialist clinic themselves, then it is their responsibility to let the referring clinic know prior to their travel. In this case, the clinic could not have known that the complainant had booked an appointment, so could not have provided the medical travel application to IHHS prior to the complainant's travel.

However, we were concerned about two issues and made observations in that regard. We found that the Dawson Medical Clinic could improve their communications with patients about the medical travel process. Although applications are ultimately approved or denied by IHHS, having written material available at the clinic for patients may help to prevent miscommunication, and would promote fairness in the delivery of the clinic's services.

Secondly, we noticed that the Dawson Medical Clinic had limited notes on its discussions with the complainant about medical travel, which made it difficult for the clinic to provide documentation in support of actions taken. This can present a transparency concern. In our discussions, the clinic remarked that fewer notes than usual had been taken due to the increased workload created by the pandemic. We noted that appropriate documentation is nonetheless a fairness concern.

HOW WE MEASURED UP IN 2021

Skills development

The Ombudsman attended the annual meeting of the Canadian Council of Parliamentary Ombudsman (CCPO) in June 2021, joining her colleagues from across the country. These meetings provide an opportunity for Ombuds to share information on their experiences, challenges and solutions. The 2021 meeting was hosted virtually by the Nova Scotia Ombuds Office.

Staff attended CCPO "lunch and learn" sessions throughout 2021, which are held every month and hosted by alternating Ombuds offices across the country.

Staff who are lawyers also attended "lunch and learn" CCPO sessions on topics relevant to their role, held approximately four times a year. They also attended a number of Canadian Bar Association and Law Society of Yukon webinars. Topics covered in 2021 included the science behind procrastination; human rights law; and a progress report on government management of the first wave of COVID-19 in residential and long-term care centres.

Complaints against the Ombudsman

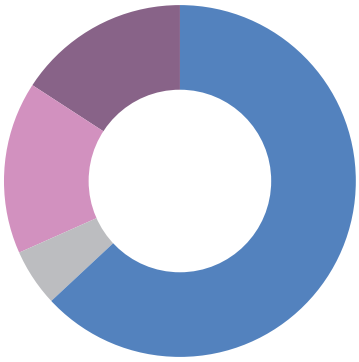
None

Ombudsman Act 2021 activity

Resolved at intake - no file opened	
Request for information	92
Early complaint resolution	31
Non-jurisdiction	24
Referred-back	28
Total	**175**
Informal case resolution files opened	18
Formal investigation opened	1
Total	**19**
All files opened in 2021	19
Files carried over from previous years	9
Files closed in 2021	12
Files to be carried forward	11

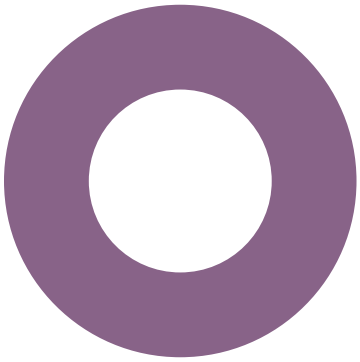
Informal case resolution cases

Closed (within 90 days)	12
Closed (over 90 days)	1
Still open (under 90 days)	3
Still open (over 90 days)	3



Formal investigation

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



Files opened in 2021 by authority

Authority	Number of files			Recommendations		
	Informal case resolution	Investigation	Total	Formal*	Accepted	Not yet implemented
Department of Community Services	4		4			
Department of Education	1	1	2			
Department of Energy Mines & Resources	4		4			
Department of Environment	1		1			
Department of Health and Social Services	4		4			
Department of Justice	2		2			
Yukon Housing Corporation	1		1			
Yukon Human Rights Commission	1		1			

*Formal recommendations are those made by the Ombudsman in a formal Investigation Report in 2021.

Yukon Information and Privacy Commissioner

2021 ANNUAL REPORT OF THE YUKON INFORMATION AND PRIVACY COMMISSIONER

The Honourable Jeremy Harper
Speaker, Yukon Legislative Assembly

Dear Mr. Speaker:
As required by section 117 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 2021.

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

Kind regards,

Diane McLeod-McKay,
Yukon Information and Privacy Commissioner

OVERVIEW OF OUR WORK

2021 was a busy year for the office of the Information and Privacy Commissioner (IPC). We opened 82 files in total under both the *Access to Information and Protection of Privacy Act* (ATIPPA), and the *Health Information Privacy and Management Act* (HIPMA). As compared to 2020, our file openings were down from 137 opened in the prior year.

The majority of the files that we opened in 2021 under ATIPPA were complaints about access to information and privacy. Under HIPMA, the majority of the files that we opened were privacy complaints and requests for advice. We were able to close 73 files under these Acts and will carry forward 145 files that we will continue to work on in 2022. Most of our 2021 files were resolved by the informal case resolution team with just one file proceeding to adjudication.

We issued four formal reports in 2021, all under ATIPPA. The new ATIPPA requires that I include in my annual report any recommendations made in a formal report, including the response by the public body to the recommendations. Given this new requirement, I have created a new section in this annual report, which includes that information. Of note is that for three of the formal reports in 2021, the recommendations were refused as a whole and for the other formal report, they were refused in part. See the *Formal Report Recommendations and Responses* section of this annual report for more information, found on pages 25 through 27.

As indicated in my opening message in this document, the IPC office opened several files in 2021 related to activities by public bodies and custodians as a result of the COVID-19 pandemic.

Work generated by the COVID-19 pandemic

We opened five complaint files under both ATIPPA and HIPMA that were related to the COVID-19 pandemic. The complaints varied and involved the following.

- A complaint that the Department of Health and Social Services was using email, known to be an unsecure form of transmission, to deliver vaccine credentials to Yukoners.

- A complaint of unauthorized disclosure of a child's personal information from a school to Yukon Communicable Disease Control (YCDC) related to YCDC's COVID-19 management activities.
- A complaint about a failure to authenticate the PHI used to book a vaccination.
- A complaint about the unauthorized disclosure of an individual's COVID-19 infection to the school community.
- A complaint associated with the Yukon government's decision to refuse to disclose vaccine information by community.

We also received 10 complaints associated with the Yukon government's decision to require public servants to attest to their vaccine status to maintain employment, which led to my decision to exercise my own motion investigation authority under the new ATIPPA to investigate the complaints. This investigation was ongoing at the end of 2021.

We received several privacy impact assessments (PIAs) from public bodies and custodians related to management of the pandemic. Some of the notable ones that we reviewed were associated with the systems used by the Yukon government to verify vaccination status.

On May 27, 2021, we received a PIA about the proof of vaccination required to cross the border into the Yukon. As part of this activity, the Department of Health and Social Services indicated that it would be accessing the Panorama public health database, which is jointly managed by the Governments of Yukon and British Columbia and which contains all the public health data of Yukon and BC residents. Part of the plan was to use Panorama to verify the vaccine status of BC residents who cross the border into the Yukon. We raised some concerns regarding this practice with the Department of Health and

Social Services that we set out in our 20-page letter sent on June 29, 2021, to the department. Included in the letter were 19 recommendations. Shortly after we issued the letter, the Yukon government ceased the vaccine verification process at the border. As such, we received no response to our comments and recommendations and we closed our file.

On September 1, 2021, we received a PIA about the Yukon government's decision to adopt the vaccine verification technology recommended by Health Canada for vaccine verification using a QR code for international travel. The Yukon was the first jurisdiction in Canada to adopt this technology. As part of reviewing this PIA, we had to do a deep dive into the technology infrastructure to assess compliance with HIPMA and its security. We issued 28 pages of comments, including 25 recommendations related to the use of this app, in a letter to the department dated September 15, 2021. The department accepted and implemented our recommendations.

In mid to late 2021, we were provided with three PIAs associated with the use of a system called CANImmunize. This system enabled Yukoners to book vaccine appointments online. It also allowed them to book COVID-19 testing and obtain the test results. We have met with representatives from the department about these PIAs. At the end of 2021, we were still reviewing them.

On November 9, 2021, we received a PIA about the Yukon government's requirement for its employees to attest to their vaccination status for continued employment. Shortly after receipt of this PIA, we received 10 complaints about the collection, use and disclosure of the personal information contained in the attestation forms. As such, we paused our review of this PIA pending the results of our investigation regarding these complaints. As indicated, we had not finalized our investigation by the end of 2021.

We also received three privacy breach reports involving one public body. Each of these breaches involved the unauthorized use or disclosure of personal information associated with the requirement of public servants to attest to their vaccine status.

More information about these complaints, PIAs and breaches can be found in this annual report in the sections on compliance review activities under ATIPPA and HIPMA.

New ATIPPA in force on April 1, 2021

On April 1, 2021, the new *Access to Information and Protection of Privacy Act* (ATIPPA) was brought into force. It had been passed in 2018 in the Yukon Legislative Assembly. Since then, work on the regulations and plans for implementation were being undertaken by the Yukon government. We too were busy in 2021 preparing for the implementation of the new Act.

Under the new ATIPPA, the IPC has expanded responsibilities and increased powers.

Among the many new responsibilities is the ability of the IPC to grant an extension to a public body's timeline to respond to an access request. The IPC is now responsible to educate the public about their rights and to educate public bodies about their responsibilities. The IPC can now provide assistance to any person in exercising their rights under the Act and can also make any recommendations that the IPC considers necessary regarding a public body's duties under the Act. In addition, the IPC can take any action necessary to identify and promote changes to a public body's practices and procedures regarding the protection of privacy and access to information.

In terms of the IPC's new powers under the Act, they can now investigate on their own motion a decision or matter that the IPC believes could be the subject of a complaint under the Act. In addition, the IPC has authority to conduct compliance audits to assess a public body's exercise of a power, or performance of a duty related to its privacy obligations under the Act. The IPC launched one own motion investigation and a compliance audit towards the end of 2021.

The IPC's investigation powers were expanded. Under the new ATIPPA, the IPC has the same power as is vested in the court to summon a person to appear before them or to produce a document. They can also enter any premises occupied by a public body on satisfying any security requirements and converse in private with any person.

Public bodies' authority to collect, use and disclose personal information for certain activities was expanded under the new Act. For example, they can now establish integrated programs and services to facilitate increased data sharing between public bodies and with other businesses and organizations. They can also establish a personal identity service to facilitate a secure means to deliver services online, and one or more public bodies can now link data.

Because of these expanded authorities, additional controls were incorporated into ATIPPA to ensure that privacy rights are upheld, including the following.

- A public body is restricted to collecting, using or disclosing the minimal amount necessary to achieve the purpose of collection, use or disclosure.
- A public body is required to implement a privacy management program, the details of which are set out in the *Access to Information and Protection of Privacy Regulation*. The Act specifies the accountability for privacy management and requires each public body to designate a privacy officer. The Regulation requires a public body to have policies and procedures including for the security of the personal information they hold. Yukon government department public

bodies must have these policies and procedures in writing.

- The Act includes mandatory breach reporting for public bodies and sets out the responsibilities of employees for reporting when a breach occurs, and when individuals and the IPC must be notified about a breach.
- The Act requires that privacy impact assessments be submitted to the IPC for any integrated service, personal identity service and data linking, and sets out the process for responding to any recommendations made by the IPC.

There were also notable changes to strengthen access to information.

- There is now a person responsible for access to information in each public body. This person is called "the head". Every department in the Yukon government is a public body and the minister of each department is the head. For every other public body, the person who is the head is specified in the Act or the Regulation.
- The Act sets out several categories of information that public bodies must make publicly available.
- The Act has a public interest override that requires the head of a public body to disclose information to an applicant when it is in the public interest to do so.
- Over 100 new public bodies were added to the schedule of public bodies in the Regulation. The majority of these new public bodies are boards and commissions.

Our work in planning for the implementation of the new ATIPPA included supporting the Yukon government in developing the Regulation and its policies and procedures. We also issued guidance documents to support public bodies in making requests for extension and in meeting some of their obligations under the new ATIPPA and Regulation.

Because of the numerous smaller public bodies now subject to the ATIPPA, we intend to develop a tool kit, similar to the one created for small custodians, to assist them in meeting their obligations under ATIPPA.

HIPMA review

In 2021, I issued comments and recommendations as part of the review of HIPMA being undertaken by the Yukon government. A news release and links to the documents can be found on my office's website here.

The bulk of my comments were regarding the increased use of technology in the delivery of health care services and risks to privacy associated with this new technology, including artificial intelligence. I made 18 recommendations, including that the IPC should be given order-making powers. On this point, I stated the following in my comments, which led to this recommendation.

> *The digital transformation has had a significant impact on individuals' privacy rights. The complex nature of data processing today, including through the use of AI, is a game changer. Today vast amounts of PHI are being processed by health care providers in an environment that is extremely complex and opaque.*
>
> *It is no longer reasonable in this environment to leave it up to individuals to fight for their rights in court as in doing so they would be at a significant disadvantage in trying to advance their case with limited knowledge about this complex environment.*
>
> *Custodians are now choosing to use technological advancements to deliver health care services for obvious reasons. The pandemic has led to a significant surge in the use of technology to deliver health care services. It is only a matter of time before AI is used as part of service delivery.*
>
> *Investigations into non-compliance require significant expertise in understanding not only the law, but also the environment in which data is processed. IPCs in Canada were established to provide individuals with a remedy to resolve disputes about compliance without involvement of the court. These offices have significant expertise in evaluating compliance in a complex technological environment.*
>
> *In HIPMA, the IPC has only the power to recommend to remedy non-compliance. If refused, it is up to an individual to go to court and fight for their privacy rights. A scan of health information privacy laws in Canada shows that most have remedial models that do not leave the issue of non-compliance and a refusal to accept an IPC recommendation in the hands of an individual whose privacy rights were found to have been violated.*
>
> *There are 10 provinces/territories in Canada with health information legislation. Of the 10, four have order-making power. The remaining six have recommendation remedial authority. Manitoba's Ombudsman can refer a matter to an adjudicator if a custodian refuses her recommendations. In Newfoundland/Labrador and the NWT, IPCs can appeal a decision to the court if a custodian refuses their recommendations. There are only three jurisdictions where it is up to the individual to appeal a decision by a custodian to refuse an IPC's recommendations. These three laws (in Saskatchewan, Nova Scotia and New Brunswick) went into effect more than a decade ago and have not been substantially amended. As indicated, the BC IPC has order-making powers in regard to decisions made by public and private sector health care providers. Nunavut only has recommendation remedial authority over public health care bodies and the individual may appeal a refusal by a public body to accept the IPC's recommendations. Nunavut's ATIPPA went into effect in 1996 with minor amendments.*
>
> *Given this context, the time has come to provide the Yukon IPC with order-making power. Where a custodian disagrees with the IPC's decision, they can seek judicial review of the decision. The custodian is in a much better position to advance their*

arguments of compliance given that they have detailed knowledge about how their data is processed. Additionally, as was recognized by my colleagues in Canada, order-making power is now the norm in modern privacy laws and a necessary component of facilitating compliance in the digital environment.

Although I was informed that the review is underway, by the end of 2021, I had not heard anything about the review work being undertaken or about my comments and recommendations.

Update on goals

2. to support the development of privacy management programs for public bodies and custodians.

4. to assist public bodies in implementing the new ATIPPA.

In 2021, we issued a document entitled *Tool Kit for Small Custodians – Navigate Yukon's Health Information Privacy and Management Act* (the HIPMA Tool Kit) to help small custodians build HIPMA compliance into their practice. We have received positive feedback from custodians who have used this resource. To raise awareness about the HIPMA Tool Kit, and as a measure to improve compliance in general amongst this group of private sector health care providers, we worked with the Department of Community Services, which agreed to distribute the HIPMA Tool Kit as part of the registration process when custodians register their practice with the Regulatory Affairs branch of the Department of Community Services.

Also, in 2021, we worked with the ATIPP Office on the development of guidance to support designated privacy and access officers in performing their functions under the new ATIPPA. As indicated, we have developed resources to help public bodies meet some of their obligations under the new ATIPPA.

We will continue to work with all public bodies on ways to improve compliance with ATIPPA, including, as indicated, developing resources, similar to the HIPMA Tool Kit, for smaller public bodies.

3. to improve access to information by working with public bodies to make increased information accessible without an access request and by improving the knowledge of those responsible for processing formal access to information requests.

As indicated in my 2020 Annual Report, we issued two guidance documents for public bodies about how to perform an effective search and how to manage requests for review. In 2021, we issued guidance on how to request a time extension from our office. We will continue to work with public bodies on ways to improve access to information.

In terms of making information more publicly accessible, our office will undertake an analysis of the information that is publicly accessible through the Yukon government's online portal, consider the kinds of information that are being routinely requested by applicants, and work with public bodies to find ways to make information that is of interest to the public publicly accessible.

8. participate in the review of HIPMA.

As indicated, I issued my comments and recommendations about amendments to HIPMA as part of the review that is underway. I will continue to participate in the review, which is being undertaken by the Department of Health and Social Services, as I am invited to do so.

Concluding remarks

In the *What we worked on in 2021* section of this annual report, you will find more information about our IPC office's activities under ATIPPA and HIPMA. You will also find additional information about our performance in carrying out our duties under these laws in the *How we measured up* section of this report.

Diane McLeod-McKay
Information and Privacy Commissioner

WHAT WE WORKED ON IN 2021

Our work under ATIPPA

EXAMPLE 1

In November 2020, we received a complaint about the administration of the *Access to Information and Protection of Privacy Act* (ATIPPA) by the Yukon Energy Corporation (YEC), the public body in this case.

The details of the allegation were that on November 5, 2020, a human resources manager at YEC disclosed an employee's personal information to another employee, contrary to ATIPPA. The manager had dropped off some insurance forms at an employee's residence in a sealed envelope; however, the envelope also contained another employee's highly sensitive personal health information. The employee who received the information reported the breach.

Our investigation determined that a privacy breach did occur, as outlined in the complaint. After we notified YEC about the complaint, it took swift action to investigate and contain the breach, and also notified the affected individual as a result of finding that there was a risk of significant harm to the individual affected by the breach. The public body's breach report identified human error as the root cause of the breach.

Our office was satisfied that the public body took sufficient measures to contain and investigate the

privacy breach in accordance with its obligations under ATIPPA. We also determined there was no evidence that any violations of ATIPPA occurred regarding YEC's collection or use of the personal information at issue.

Although we were satisfied with the overall management of the breach, we did identify some gaps in YEC policies and procedures, and a lack of training for employees.

In order to reasonably avoid a recurrence and to address the gaps identified during the investigation, our office made two recommendations.

First, YEC should implement training for all employees regarding requirements under ATIPPA. Because YEC may also be subject to the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA), we suggested that it contact the office of the Privacy Commissioner of Canada about the breach and ensure that it is meeting any requirements of PIPEDA, if applicable.

In regard to the training, we made a number of observations.

- The training should be ongoing (for example, including yearly refreshers) and subject to a review schedule.
- YEC may want to consider more specialized training for employees who regularly handle sensitive personal information, such as senior management and human resources staff.
- YEC may want to consider reaching out to the Government of Yukon ATIPP Office, as well as the Office of the Privacy Commissioner of Canada to inquire about available training resources regarding PIPEDA.
- Topics to consider may include confidentiality, protection of personal information, and breach reporting.

The second recommendation is that YEC review and update its current privacy policies and procedures to ensure they are comprehensive, accurate, and relevant.

The public body confirmed its acceptance of these recommendations.

Recognizing that the recommendations require a significant amount of work effort, YEC agreed to provide our office with a detailed implementation plan no later than March 31, 2021. Our office continued to work with this public body to ensure implementation of the recommendations and to provide support as necessary. We confirmed that all recommendations were implemented during 2021.

EXAMPLE 2

Our office received a complaint in December 2020 about the Department of Education's disclosure of personal information to the Yukon Communicable Disease Control (YCDC) branch of the Department of Health and Social Services. In particular, the complainant stated that a local school, attended by their child, had disclosed information about their travel history, and that they had experienced symptoms of illness. The complainant was upset that they had not been notified that this disclosure was to occur. They also said that they had been unable to confirm under what authority this information was disclosed.

During our investigation, we learned that the Department of Education was relying on a 2010 information sharing agreement for its authority to disclose this information. Had the agreement been valid, it likely would have provided the public body with the authority to disclose. However, our investigation found that the agreement was a creation of the *Health Act* and relied on a provision of that Act; that provision was repealed when the *Health Information Privacy and Management Act* (HIPMA) came into force. As a result, we found that the agreement itself was invalid, and that any information shared using the agreement as authority was not in compliance with the *Access to Information and Protection of Privacy Act* (ATIPPA).

The public body agreed with our position and, during the course of this investigation, began work on a revised agreement. We also asked that the public body refrain from disclosing the type of personal information contemplated by the agreement, until authority under ATIPPA had been established. The department agreed with this.

Although this complaint was about disclosure (and does not speak directly

to notification requirements regarding collection of information), the public body agreed to develop messaging for parents to ensure that they are aware of what information may be disclosed and the public body's authority to do so.

At the end of 2021, neither the revised agreement nor the messaging for parents had been completed.

EXAMPLE 3

In early December 2020, we received a complaint about the administration of the *Access to Information and Protection of Privacy Act* (ATIPPA) by the Department of Highways and Public Works, the public body in this case. The complaint was in regard to the collection of personal information by the department's Motor Vehicles Services office.

The complainant felt the office was collecting more personal information on its medical examination certificate form than is reasonably necessary to determine whether a person has any medical factors that could inhibit their ability to drive a motor vehicle.

Our investigation found that the personal information being collected by the public body is consistent with the medical standards identified in the Canadian Council of Motor Transport Administrators (CCMTA) National Safety Code – Standard 6: Determining Driver Fitness in Canada. Physicians have the option to indicate that there is no health disorder to report, and in these circumstances, no additional personal information is collected by the public body.

In our view, the branch's collection of personal information on the form complies with its obligations under ATIPPA.

However, our investigation identified an ambiguity with the section of the form entitled *Heart and Vascular*. It was not clear whether the physician was required to indicate systolic and diastolic pressure even if they had checked the box indicating there was no health disorder to report. In response to our observation, the public body explained that this information was not required, but also acknowledged the form could be confusing in that regard. To rectify this, the public body agreed with our recommendation that it update the Heart and Vascular section of the form to clarify that blood pressure information is not required where the physician has indicated there is no health disorder to report.

The public body agreed that the form would be updated no later than September 1, 2021. We confirmed later that this change was made.

The reason for the long implementation period is that the form at issue is a prescribed form that must go through an approval process for any modifications. Typically, the Department of Highways and Public Works waits until there are several amendments to make before proceeding with an update, as it can be time-consuming and costly to complete.

EXAMPLE 4

In December 2020, our office received a request to review the response to an access request provided by the Department of Finance. The applicant had asked for documents pertaining to a fee review, in which the department examined the various ways that the government derives income through fees.

The applicant had received no records. The department (the public body in this case) cited as its authority several provisions of the *Access to Information and Protection of Privacy Act* (ATIPPA), including within Section 15.

Section 15 refers to Cabinet confidences, and in the ATIPPA in force at the time, our office did not have authority to view Cabinet confidences, which provided a challenge for our review of this request. (In the ATIPPA currently in force, this has changed.)

The public body had provided a final response to the applicant stating that some records had been provided but had been partially severed. Because the applicant had received no records, they were understandably confused. This was brought to the attention of the public body, who said it had encountered an "administrative error" and had neglected to send the responsive records to the applicant. After this discussion, the records were promptly sent. Ultimately, they formed a small portion of the responsive records, which were otherwise withheld entirely.

After discussing the contents of the responsive records with the public body, our investigator found that all records contained at least some information that constituted a Cabinet confidence, as set out in Section 15. The public body stated that these records also contained information that was not a Cabinet confidence. As such, we asked the public body to release the information that was not a Cabinet confidence to the applicant but it refused.

The public body argued that Section 15 should be interpreted to apply to records as a whole (such that any record that contains a Cabinet confidence must be withheld in its entirety). Our Information and Privacy Commissioner (IPC) has already interpreted this provision, which our office brought to the attention of the public body. The IPC's interpretation reads: "… an applicant retains their right of access to that portion of the record that the exception in subsection 15 (1) does not apply to." We informed the public body that this interpretation is binding on them but the response from the public body was that it would seek advice of its legal counsel.

Having consulted with legal counsel, and after further discussion, the public body accepted the interpretation.

To conclude this review, the department provided an amended response, including line-by-line redactions, so that our investigator could verify that only Cabinet confidences were withheld. This resulted in a substantial amount of information being released to the applicant, and we were able to resolve this file.

EXAMPLE 5

We received a request for review of a decision on an access request made to the Department of Environment, the public body in this case. The complainant was considered a third party because some of their business information was responsive to the access request. As was the correct process under the former *Access to Information and Protection of Privacy Act* (ATIPPA), third parties were notified if any of their information was to be released as part of a response to an access request and were given a chance to provide comments before the package of information was released. In this case, the third party did not want most of their information to be included.

During this review, our investigator evaluated the public body's use of Section 24 of ATIPPA, including instances where it had been cited, and instances where the public body sought to release information potentially captured by that provision. (Section 24 is a mandatory exception to the right of access where the responsive information would be harmful to third party business interests.)

We found that much of the information at issue was not supplied in confidence, which is a requirement where Section 24 is cited. For example, the third party has extensive product information publicly available on their website, including product specifications, and intended uses for the products. As well, the contract details that were captured by this access request are also available on the contract registry.

The information that the public body sought to release was not so detailed as to constitute either a trade secret, commercial information, financial information, or any of the other information contemplated by Section 24. For example, no prices for specific products were to be released.

For the most part, our investigator agreed with the manner in which the public body had used Section 24 to put together the records package. Although the investigator found some inconsistencies and small oversights, it did not amount to a disagreement as to the public body's overall use of the section. Instead, we found that the public body could provide a thorough and helpful explanation of its rationale. In cases where Section 24 had been cited, the public body was able to explain how the harm test was being met or not. (The harm test looks for a reasonable expectation of probable harm to the third party, if the information was disclosed.)

The public body was receptive to our investigator's comments regarding a few oversights in its preparation of the records package and the amended version of the package which was prepared for release was compliant with ATIPPA.

EXAMPLE 6

We received a request for review of an access request seeking records related to a court file. After making the access request to the Department of Justice, the public body in this case, the applicant received a final response indicating that the entirety of their request was outside of the scope of the *Access to Information and Protection of Privacy Act* (ATIPPA) and so no information would be provided.

The applicant had been seeking records relating to their own court file. In addition, the applicant stated that they were seeking internal communications, emails and records in relation to their court file.

In support of its position, the Department of Justice cited Section (2)(1)(a) of ATIPPA, which states that the Act does not apply to (amongst other things) records in a court file. Instead, the Director of Court Services had advised the access and privacy analyst responsible for responding to this access request that any record on the court file would be held with Court Services, and that the applicant should be directed there to request their court records.

Our investigator found that while court file records may sit with Court Services, this does not capture other internal records that may reference the court case. The investigator felt that the applicant had used sufficiently clear language in making their request to indicate what it was they were seeking.

The public body acknowledged that it had not conducted a search for internal records that may lie outside of Court Services. Following our review, the public body agreed to conduct a fulsome search and provide an amended response as appropriate. We also provided the applicant with guidance on making a request for information to Court Services, which is a different process than a request under ATIPPA. The applicant was pleased with this outcome, and the matter was resolved.

EXAMPLE 7

In June 2021, the Department of Environment, the public body in this case, submitted a breach report to our office. It involved the issuance of a special game license and one individual was identified as being affected by the breach. The personal information at issue was the individual's name, date of birth and client ID (used to access the department's online portal).

Initially we believed it was a mandatory breach notice, required under the *Access to Information and Protection of Privacy Act* (ATIPPA) because there was a risk of significant harm (ROSH) to the individual whose information had been part of the breach. However, through discussions with the department, it was determined that in fact there was no ROSH to the affected individual. Therefore, the breach report was not mandatory in this case.

Nevertheless, we took the opportunity to work with the public body to strengthen its understanding of how to assess whether a ROSH has occurred because of a breach, and how to fulfill its privacy and information security obligations under ATIPPA.

We also confirmed that the breach in this case had been contained and mitigated, including that the employee who discovered the breach immediately removed the license from the system, ensuring no more copies could be printed or viewed.

Our office also made informal recommendations to the public body regarding how to avoid a recurrence and we were satisfied that sufficient action will be taken.

EXAMPLE 8

In April 2021, we received a request for review of a decision made by the Department of Justice, the public body in this case, about an access request from a person who had previously been an inmate at the Whitehorse Correctional Centre. While in custody, the applicant was involved in some incidents in which force was used. The applicant was seeking all records relating to these incidents.

The applicant was granted partial access to the responsive records. However, the digital video recordings (DVR) were withheld under Subsection 19 (1)(c) and (l). These subsections authorize a public body to refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal current investigative techniques and procedures or harm the security of any property or system. The applicant sought a review of the public body's decision to withhold the DVR records.

After looking over the public body's final response, our investigator noted that the applicant had not been given the opportunity to view the relevant DVR footage, as well as not being provided with a copy. In a previous inquiry report (ATP15-055AR) issued in 2016 by the Yukon Information and Privacy Commissioner (IPC), which involved a very similar set of circumstances, the IPC agreed with the public body's decision to refuse access to the DVR footage but also found that the applicant should be given an opportunity to view the records without receiving a copy. The IPC 2016 report noted that this strikes an appropriate balance between the applicant's right of access to their own personal information and the security risks associated with releasing the information, as well as the protection of any third parties' personal privacy.

Our investigator in this 2021 case recommended that the public body allow the applicant to view the responsive footage without providing a copy of the records. The public body confirmed acceptance of this recommendation.

When asked why the public body had not made this option available to the applicant from the onset, it was explained that new staff at the Department of Justice, as well as at the correctional centre, were not aware of the IPC's findings on this matter, nor that having an applicant view the footage was an option. The public body confirmed that going forward, it would ensure this option was presented to applicants where appropriate.

EXAMPLE 9

In April 2021, an applicant made an access request to the Executive Council Office (ECO) of the Yukon government, asking for memoranda, emails, briefing notes and any other records regarding the government's decision not to publicly release COVID-19 vaccination figures by community. The applicant requested records between December 1, 2020 and April 16, 2021.

ECO, the public body in this case, provided the applicant with a number of records, but with a large number of redactions, citing Sections 74 (1)(a) and 76 (1) of the *Access to Information and Protection of Privacy Act* (ATIPPA) as its authority to withhold the information. The applicant asked that the public body's decision to sever information be reviewed by our office.

Section 74 (1)(a) allows public bodies to withhold information if it comprises advice or recommendations prepared by or for a public body and Section 76 (1) allows public bodies to withhold information if it might harm relations between governments or organizations.

At the end of June, ECO provided our office with unredacted copies of the records and a schedule of records. For the majority of the records, it was our opinion that the public body had not provided sufficient information to support its authority to withhold the information from the applicant.

In early July, our investigator spoke with the access analyst who had completed the redactions to advise them of our preliminary analysis, as noted above. Our investigator described the additional information that our office would require in order to decide if the cited provisions applied. These are commonly used provisions and ATIPPA analysts are generally familiar with what information they need to provide in order to satisfy the legal tests.

After several weeks without a response from the public body, we followed up to ask when a response could be expected. Based on these exchanges, our investigator became concerned that we would not obtain the necessary rationale from the public body in time.

It is worth noting that under the ATIPPA currently in force, our office only has 60 calendar days to attempt to settle a complaint through a consultation process like the one being undertaken in this case. (Under the previous legislation, 90 days were allotted for settlement.) During these 60 days, the investigator must review records, form an opinion about whether provisions apply (sometimes including extensive legal research), and have discussions with the public body and applicant to resolve the issues. With these new timelines, it is imperative that our office receives the unredacted records and detailed rationale from the public body as quickly as possible, particularly when there are a large number of responsive records at issue.

Generally, this should not represent a large work effort for the public body because the work of identifying which provisions apply to which information (and why) ought to have been done prior to providing the applicant with a final response. In practice, however, our office has experienced difficulties in obtaining sufficient detail from the public body to allow us to form an opinion about whether the cited provisions apply to the redacted information. In this case, while the public body did provide rationale for each redaction, in many cases, it simply noted the provision being replied upon, without providing any evidence.

In the absence of sufficiently detailed rationale and evidence, the investigator will be unable to determine whether the cited provision applies. This creates the risk that a file will move to formal investigation without the investigator having been able to form an educated opinion. This does not serve anyone's interests.

With time running out and in the absence of information from the public body, our investigator prepared a spreadsheet outlining our preliminary line-by-line analysis of the records package. It was shared with the public body to assist them in understanding what kind of information was required, and to identify the information they likely did not have authority to withhold at all. Although this additional work effort was possible in this case, it may not always be, depending on our office's case volume and the number of pages/redactions at issue.

Over the next few weeks, our investigator had several email exchanges and phone calls with the public body's employee working on this file, to explain the urgency of providing the additional rationale as soon as possible, in order to avoid escalation of the file to formal investigation. In early August 2021, the public body provided an updated records package.

The public body had by now agreed to release the majority of the redacted information to the applicant. In terms of the very minimal information that remained redacted, it was our opinion that the public body did have the authority to withhold it from the applicant under the cited provisions. With that said, we remained of the view that the rationale provided by the public body still lacked detail with respect to the legal tests and its exercise of discretion. We shared this feedback with the public body and it advised that this would be addressed with the analyst who had completed the work.

EXAMPLE 10

Our office received a complaint raising concerns about a response to an access request received from the Aboriginal Relations branch of the Executive Council Office, the public body in this case. The complainant was concerned about three things. They felt that the public body did not conduct an adequate search for records. They were also concerned that more than $600.00 had been allocated in the provided cost estimate toward maps and yet the response received contained no maps. They also believed they had received and paid for records that were unrelated to their request.

The complainant also raised a refused access concern, which was managed in a separate file.

With regards to the adequacy of this search, the complainant was concerned that they had requested (amongst other things) certain maps but had received none. Our investigator determined that the information the complainant was seeking was in fact responsive to the access request and had been included in the final response, but much of it had been severed. In the separate file noted above, it was determined that the public body did have authority to refuse access to this information. Following our review of the search process used for this access request, and given the above, it was our view that the search conducted by the public body was adequate.

With regards to the cost estimate, the fee structure for an access request set out in the *Access to Information and Protection of Privacy Act* (ATIPPA) and in the ATIPPA Regulation indicates that money is allocated for work performed, rather than for information received. Work was performed to produce copies of the responsive maps, although ultimately much of this information was severed. Costs paid were for this work. We noted that in this case the public body advised the ATIPP Office to inform the complainant that this information was likely to be severed prior to the estimate of cost being approved. The ATIPP Office obliged, and accordingly included a statement to this effect in the estimate of cost, which the complainant would have reviewed prior to paying. ATIPPA does not provide for any waiver of costs for an applicant who has paid costs for an access request but is refused access to some or all of the responsive information. We therefore concluded that the public body had met its obligations in this regard.

Finally, the complainant had alleged that they received documents that were unrelated to their access request. The complainant had broadly

requested "All internal documents and records…," and went on to list an array of record types that they were interested in. After reviewing each record, our investigator found that the information provided was in fact related to this broad request. If the complainant did not wish to receive certain types of records, ATIPPA provides them with the opportunity to discuss this, and narrow the scope of the search. This opportunity was afforded in this case.

EXAMPLE 11

We received several complaints concerning the new Yukon Corporate Online Registry, which is operated by Corporate Affairs in the Department of Community Services (the public body in this case), and which was created under the new *Societies Act* that came into force on April 1, 2021. Among other things, the registry includes information about local societies. Under the *Societies Act,* societies have a period of time to transition and conform to the new Act.

When the new Act came into effect in April 2021, the private, residential addresses of many societies' directors became visible on the registry to anyone with an account. An account is free to make, so this information was easily found.

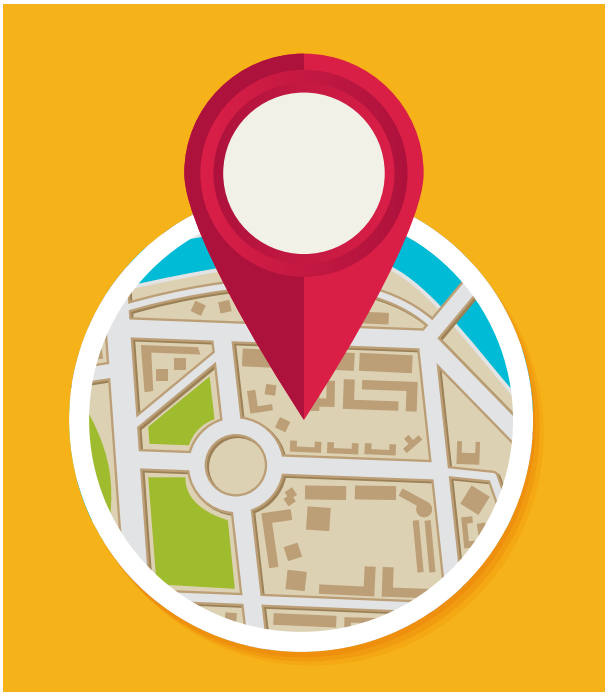
The complainants alleged that this disclosure of their personal information was unauthorized. They were also concerned that they had not been told that this information would be publicly released.

The Yukon Corporate Online Registry is designated as a public registry under the *Access to Information and Protection of Privacy Act (ATIPPA) Regulation*. Under ATIPPA, information in a public registry can be disclosed.

Through this investigation, we learned that there were two ways in which the addresses of societies' directors were made public during the time period in question. One was not in compliance with ATIPPA and the other one was.

In accordance with the *Societies Act* and *Regulation*, personal information contained in the registry as of April 1, 2021 was to remain private and should not have been publicly available. This includes the information at issue, which was submitted to the registrar prior to April 1, 2021. However, the new Act expands what is publicly available in the registry. In making the necessary changes to the registry to include this additional information, Corporate Affairs erroneously also made public certain information submitted before April 1, 2021. Because the new *Societies Act* explicitly prohibited the release of this information and did not require that it be put into the public registry, we found that this disclosure was not in compliance with ATIPPA.

However, from April 1, 2021 onwards, there is a requirement under the



Societies Act, in conjunction with ATIPPA, to make public any information found on required filings (including director addresses). Although there are options under the *Societies Act* to change addresses to, for example, a post office box (so that residential addresses are not revealed), this change caught some societies off guard and was a point of concern.

Where the disclosure of information was unauthorized, Corporate Affairs acknowledged the non-compliance and blocked this information in the registry.

Corporate Affairs also put a temporary block on information submitted after April 1, 2021, to provide affected societies with sufficient time to change their address if desired. Corporate Affairs agreed with our comments that, although they had sent out various communications about the changes to the *Societies Act*, they had not made the impact of some changes sufficiently clear, including for societies that had not yet filed an application to transition to the requirements of the new legislation.

This resolved the matter for the complainants. Although Corporate Affairs made these changes as a result of our complaints, they were proactive in their solutions, which were implemented before any recommendations were made. As such, no recommendations were made.

Formal report recommendations and responses

In 2021, the office of the IPC issued four formal reports about refused access to information. Two reports went to the Department of Environment. The other two went to the Department of Justice.

We are including a section on these reports, recommendations and responses as required in the new ATIPPA as well as to bring attention to a troubling trend where the recommendations in all four of these reports have all been refused or deemed refused (not responded to in time) by the public bodies in question. Below are summaries of these reports and the responses.

Department of Environment

Inquiry Report ATP20-06R, March 22, 2021

Summary

In December 2019, an applicant made a request to the Department of Environment for access to "[a]ll GPS, VHF and satellite collar relocation data, in entirety, for the caribou/ caribou herds in Yukon and including trans-boundary movements into neighbouring jurisdictions" from 1980 to the present. The department refused the applicant's access request in full, citing as its authority for refusal: Subsection 24 (1) together with its subparagraph (a)(ii), paragraph (b) and subparagraph (c)(ii) (disclosure harmful to business interests of a third party); Subsection 17 (1)(b) (disclosure harmful to the financial or economic interest of a public body); and Subsection 21 (b) (disclosure harmful to the conservation of heritage sites, etc). The applicant requested that the Information and Privacy Commissioner (IPC) review the refusal. Settlement of the review failed, and the matter went to inquiry.

The IPC found that the department is required to refuse certain information requested by the applicant about the Fortymile caribou herd. She further found that the department did not have authority to rely on the provisions cited for some of the information requested about the Fortymile caribou herd and for all the information requested about the other herds, which are: Porcupine caribou herd; Chisana caribou herd; Carcross, Ibex, Atlin and Laberge ('Southern Lakes Caribou') caribou and the Liard Plateau, Little Rancheria and Swan Lake caribou herds; and the Finlayson, Aishihik, Bonnet Plume, Clear Creek, Coal River, Ethel Lake, Hart River, Klaza, Kluane, Labine, Moose Lake, Pelly, Redstone, South Nahanni, Tatchun, Tay River, Burwash, Little Salmon, and Wolf Lake caribou herds.

Recommendation

The IPC recommended that the department provide access to the information about these herds that the applicant is entitled to.

Decision about recommendation

The department had 30 days from the date the report was received to decide whether to accept or refuse the IPC's recommendation and it was required to provide its decision in writing to the IPC and the applicant. The report was delivered to the department on March 22, 2021.

The requirement of the department on receiving the report was as follows.

- Subsection 58 (1) together with its paragraphs (a) and (b) of the prior ATIPPA state that "[w]ithin 30 days of receiving the report of the commissioner under section 57, **the public body must (a) decide whether to follow the recommendations of the commissioner; and (b) give written notice of its decision to the commissioner…"**
- Subsection 58 (3) states that "[if] **the public body does not give notice within the time required by paragraph (1)(b), the public body is deemed to have refused to follow the recommendation of the commissioner"**.

Department's response

A letter received from the Deputy Minister of the Department of Environment, dated April 19, 2021, stated as follows.

The Department of Environment is in receipt of your March 22, 2021 report and recommendations concerning File ATP20-06R. This letter serves as the Department of Environment's notice, as required under Section 58 of the Access to Information and Protection Privacy Act (2002), within the required 30 days of receiving the report.

The implications and consequences of the recommendations in paragraphs 287-292 are significant. The Department requires time to consult with various partners prior to disclosing data that have been requested by the Applicant and recommended for disclosure by you. Releasing the requested information may have significant implications for meeting our mandated responsibility to manage and conserve caribou. In some cases there is a significant risk of considerable damage to the relationships with our partners in wildlife management, including other domestic and international governments. Please be advised some of these partners may reach out to you to understand your role in this inquiry.

I understand that the Information and Privacy Commissioner is an independent officer of the Yukon Legislative Assembly and, as such, is not part of the Government of Yukon and not subject to the election caretaker convention. However, as you know, a territorial election was called

on March 12 and held April 12, 2021. Until the next government is sworn in, the Government of Yukon remains in a caretaker state and will not be meeting with other governments to discuss your report's recommendations and implications.

I am aware of the gravity and importance of the recommendations from your inquiry and I assure you we share your interests in promoting transparency and information-sharing. I will provide you with more information regarding your recommendations as soon as possible.

If it would be helpful, I would be pleased to meet with you to discuss.

IPC's response to the department

The IPC responded to this letter, informing the Deputy Minister that she was of the view that because the department failed to inform her of its decision, that the lack of decision about whether it will or will not accept the recommendations in the letter constitutes a deemed refusal of the recommendations in the report. The IPC then informed the applicant of this fact.

The issue about whether the department made a decision or not about the recommendations in the April 19th letter, such to have triggered the deemed refusal of the recommendations provision in ATIPPA was later the subject of a court review. The court's decision on this matter, which was issued on January 26, 2022, can be found here.

Department of Environment

Inquiry Report ATP20-07R, October 6, 2021

Summary

In November 2019, an applicant made a request to the Department of Environment for access to "[a]ll collar relocation data (GPS, VHF or Satellite Collar), in entirety, for musk ox. This data may span 1980 to present. This should include collar fix data for any musk ox that was collared In Yukon and should include data that spans over the herd's entire range, including transboundary data..." as well as "all transmissions and attempted transmissions, even if data were not obtained..." for the period between January 1, 1980, to the present.

The department refused the applicant's access request in full, citing subsection 21 (b) (disclosure harmful to the conservation of species, etc.) as its authority for refusal. The applicant requested that the Information and Privacy Commissioner (IPC) review the refusal. Settlement of the review failed, and the matter went to inquiry.

The IPC found that the department was not authorized to rely on subsection 21 (b) to refuse to disclose the information sought by the applicant.

Recommendation

The IPC made one recommendation; it was "that the Department disclose to the Applicant the information they requested in their Access Request".

Decision about recommendation

The department had 30 days from the date the report was received to decide whether to accept or refuse the IPC's recommendation and it was required to provide its decision in writing to the IPC and the applicant. The report was delivered to the department and the applicant on October 6, 2021.

Department's response

In a letter dated November 5, 2021, the Deputy Minister of the Department of Environment provided the following response to the recommendation contained in the report.

The Department of Environment is in receipt of your Oct 6, 2021 report and recommendations concerning File ATP20-07R. This letter serves as the Department of Environment's notice, as required under Section 58 of the Access to Information and Protection Privacy Act (2002), within the required 30 days of receiving the report.

The implications and consequences of the recommendation to disclose the data are significant. The Department requires time to consult with Inuvialuit partners prior to disclosing data that have been requested by the Applicant and recommended for disclosure by you. As detailed in our submissions since 2019, releasing the requested information will have significant implications for meeting our mandated responsibility to manage and conserve muskox. Additionally, there is a significant risk of considerable damage to our relationships with our Inuvialuit partners in wildlife management.

I am aware of the gravity and importance of the recommendations from your inquiry, and I assure you we share your interests in promoting transparency and information-sharing. If it were helpful, I would be pleased to meet with you to discuss.

IPC's response to the department

On November 8, 2021, the IPC wrote to the Deputy Minister expressing concern about the content of the notice provided by the department, noting that it did not appear to contain a decision. Therefore, in her view, subsection 58 (3) was triggered and the IPC informed the Deputy that she was of the view that the department was deemed to have refused the recommendation. She then notified the applicant about the department's response.

Additional comments

This was now the second time in a matter of months that the Department of Environment did not make a decision within the time frame allotted in ATIPPA about whether it would or would not accept the recommendations contained in an inquiry report. Instead, it provided what appears to be another notice of non-decision. The IPC finds this

trend very troubling and informed the Deputy Minister about her concerns, noting that we have three more formal reports concerning this department that are in progress.

Department of Justice

Inquiry Report ATP18-63R, May 21, 2021

Summary

The applicant made an access request to the Department of Justice for "[a]ny training and supplementary materials, including written instructions, copies of presentations, etc., provided to staff in relation to processing/handling of ATIPP requests". The department responded by providing the applicant with access to numerous records and refused portions of one record citing as its authority Subsection 18 (a). This subsection authorizes a public body to refuse to provide an applicant with access to information that is subject to solicitor-client privilege. The department submitted that the record contained the legal advice of one of its lawyers in the Legal Services Branch (LSB) of the department. Specifically, the record was described by the lawyer as an internal guidance document for LSB lawyers that contained legal advice for the lawyers about how to respond to an access to information request under the ATIPP Act for access to a record containing solicitor-client privileged information. The IPC determined that the information separated or obliterated from the record is subject to solicitor-client privilege but that the privilege was waived by the department because the record was stored on the Yukon government's intranet and was thereby accessible by any employee in any Yukon government department with a YNET account and other third parties. The conclusion reached by the IPC was that the department did not meet its burden of proving that Subsection 18 (a) applied to the information separated or obliterated from the record.

One of the applicants referenced in one of the four reports outlined in this section of our annual report was a Whitehorse reporter, Jackie Hong. This image shows a tweet from the reporter marking three years since she filed her ATIPP request. We are including it, with permission from Ms. Hong.

Recommendation

The IPC made one recommendation that "the Department provide the Applicant with access to the information the Applicant is entitled to. For the sake of clarity, the Applicant is entitled to access the Record in full, without any separations or obliterations."

Decision about recommendation

The department had 30 days from the date the report was received to decide whether to accept or refuse the IPC's recommendation and it was required to provide its decision in writing to the IPC and the applicant. The report was delivered to the department and the applicant on May 21, 2021.

Department's response

A letter dated June 17, 2021 from the Deputy Minister of the department stated as follows.

Thank you for your letter of May 20, 2021 and its attached Inquiry Report.

The Department of Justice respectfully disagrees with the conclusion set out in para. 93 of your Inquiry Report that the Department of Justice "impliedly waived" solicitor-client privilege. The Department will therefore not be following your recommendation.

IPC's response to the department

The IPC did not respond to the June 17 Letter. She did, however, inform the applicant that the recommendation was refused.

Department of Justice

Investigation Report ATP-ADJ-2021-07-081, December 3, 2021

Summary

The complainant made an access request to the Department of Justice for "all written, recorded, and video or audiotaped records, and all records produced by any other method, of information obtained and recorded by SCAN employees related to the occurrence of activities intended to investigate [the Complainant] and [certain specified venues identified by the Complainant] and any other place or vehicle during the period of Jan. 1, 2019, and June 3, 2019". The head of the department responded by providing the complainant with access to 19 records and refused portions of 18 of the 19 records citing as its authority Subsections 64 (1)(b)(i), 70 (3), 72 (1)(b)(i), 72 (1)(b)(ii) and 72 (1)(b)(ix).

Subparagraph 64(1)(b)(i) is a mandatory exception to the right of access and requires the head of a responsive public body to withhold information and records upon determining that the information or records are generally excluded information. The head did not provide any evidence to support their assertion that this subsection applies, including that they did not identify why the information is generally excluded.

Section 70 is a mandatory exception to the right of access and requires the head of a responsive public body to withhold personal information they determine would be an unreasonable

invasion of the third party's privacy. The head provided no evidence to support how this provision required them to withhold the personal information identified in the records. However, because this provision is a mandatory exception to the right of access, the IPC adjudicator evaluated whether any of the provisions in section 70 applied to the information in the records and found that subsection 70 (1) applies to some of the third-party personal information in the Records.

Subparagraphs 72 (1)(b)(i), 72 (1)(b)(ii) and 72 (1)(b)(ix) give discretionary authority to the head of a responsive public body to withhold information if the head determines that disclosure of the information could reasonably be expected to interfere with a law enforcement matter, reduce the effectiveness of an investigative technique or procedure, or endanger the life or threaten the safety of a law enforcement officer. The head provided no evidence to support how these provisions permitted them to withhold information in the records. The conclusion reached by the adjudicator was that the department did not meet its burden of proving that Subparagraphs 64 (1)(b)(i), 72 (1)(b)(i), 72 (1)(b)(ii) and 72 (1)(b)(ix) applied to the information withheld from the records.

The adjudicator recommended that the head provide the complainant with access to the information that the applicant is entitled to, except for the information required to be withheld pursuant to section 70.

Recommendation

The adjudicator made one recommendation; it was that "[on] Issues One through Five…that the Head disclose to the complainant the information they requested in the Records that they are not required to withhold pursuant to section 70".

Decision about recommendation

The obligation of the department on receiving the report is set out in Section 104 of the new ATIPPA. It states as follows.

104(1) Not later than 15 business days after the day on which an investigation report is provided to a respondent under subparagraph 101 (b)(ii), the respondent must, in respect of each recommendation set out in the investigation report

(a) *decide whether to*

(i) *accept the recommendation in accordance with subsection (2), or*

(ii) *reject the recommendation; and*

(b) *provide*

(i) *a notice to the complainant that includes*

(A) *their decision, and*

(B) *in the case of the rejection of a recommendation, their reasons for the rejection and a statement notifying the complainant of their right to apply to the Court for a review of the decision or matter to which the recommendation relates, and*

(i) *a copy of the notice to the commissioner.*

Department's response

In a letter dated December 23, 2021 from the Deputy Minister of the department, they provided the following response to the recommendations contained in the report.

The Department of Justice has received and reviewed the Investigation Report issued on December 3, 2021, by Adjudicator Lynn-Ellerton on access request 21-013.

The Department of Justice's response to the IPC recommendations is as follows:

- Removal of redactions per s. 64 (1)(b)(i) Access to Information and Protection of Privacy Act (ATIPPA).
- Removal of redactions to the names of SCAN investigators.
- Information about third parties who made the complaint and who were investigated or surveilled in relation to the complaint has been redacted per s. 70 ATIPPA.
- Removal of all redactions to record 6, except the third party personal information.
- Removal of all redactions per s. 72 (1)(b)(ii) ATIPPA except one instance on record 4, page 1. The Department maintains the redaction of the specific recording device on the basis that disclosure of this nature could reasonably be expected to reduce the effectiveness of an investigative technique.
- Removal of all redactions per s. 72 (1)(b)(i) ATIPPA, except for part of record 13 and record nine as these two records are part of an ongoing SCAN investigation. The Department maintains these redactions on the basis that disclosure could reasonably be expected to interfere with a law enforcement matter (the ongoing SCAN investigation).
- The Department maintains the redactions per s. 72 (1)(b) (ix) ATIPPA to the cell phone numbers of SCAN investigators contained in records 15 and 16 on that basis that the disclosure could be reasonably expected to endanger the life of or threaten the safety of a law enforcement officer.

IPC's response to the department

The Dec 23rd letter was sent to the applicant directly by the department and a copy of it provided to the office of the IPC. The IPC did not respond to the letter.

Our work under HIPMA

EXAMPLE 1

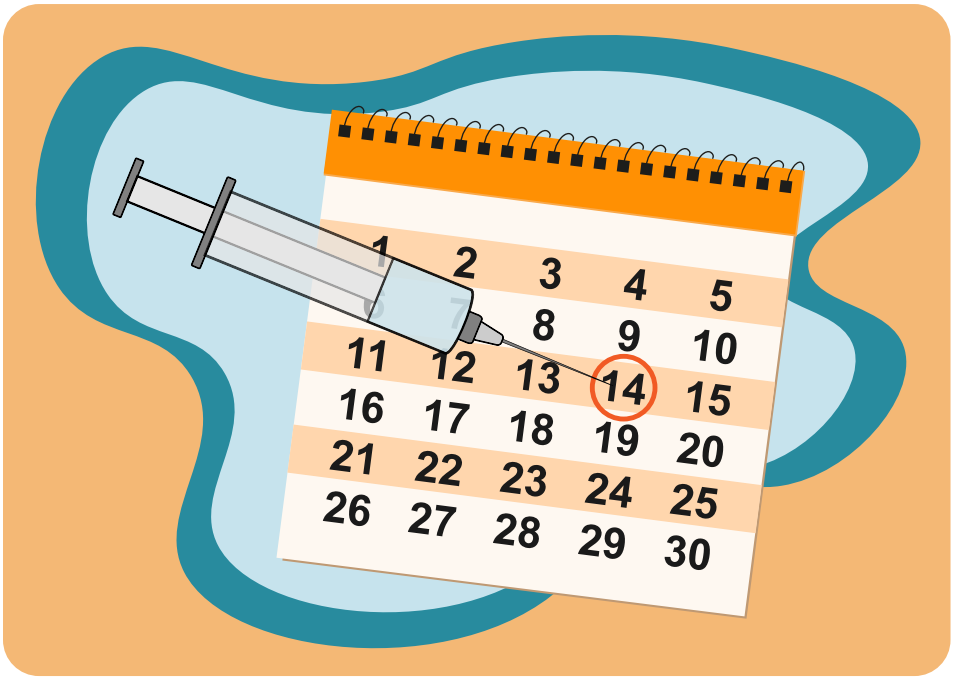
Our office received a complaint that the Yukon Communicable Disease Control (YCDC) branch of the Department of Health and Social Services (HSS), the custodian in this case, had collected the personal health information of the complainant indirectly from a local school, without the complainant's knowledge or consent, as part of disease monitoring activities during the COVID-19 pandemic.

Previously, our office had investigated other aspects of this case, in particular the Department of Education's compliance with the *Access to Information and Protection of Privacy Act* (ATIPPA) as this department was the party that had disclosed the information. In our work on that file, we found that Education had relied on an information sharing agreement between the Department of Education and the Department of Health and Social Services. This agreement relied on a provision of the *Health Act*, which had since been repealed. Because Education did not cite any other authority for its disclosure, we found that the disclosure was unauthorized. Education agreed to draft a new information sharing agreement that reflects the current legal framework.

In our work on this related HIPMA complaint, the custodian provided our office with its authority under HIPMA and we concluded that YCDC was authorized to collect the complainant's personal health information. YCDC monitors indicators of communicable disease (including COVID-19) and takes preventative measures when a transmission risk is identified. HIPMA permits information to be used for the purpose of assessing serious harms to the health of individuals, and for acting to reduce those risks. HIPMA also authorizes the collection of information for those purposes. Such collection can be indirect and does not require consent.

As part of our resolution of this file, the custodian (HSS) agreed to work with Education to ensure that an information sharing agreement is drafted reflecting the appropriate legal authorities for collections and disclosures between the two departments, including provisions found in HIPMA, as well as the *Access to Information and Protection of Privacy Act* and the *Public Health and Safety Act*.

Because YCDC interacts with HIPMA in some rather complex ways, we encouraged the custodian to work with our office to ensure that the new information sharing agreement would be compliant with the law.



EXAMPLE 2

In April 2021, we received a complaint from an individual and her partner in which they raised concerns about the Department of Health and Social Services (HSS), the custodian in this case. They stated that HSS had used their personal health information (PHI) to schedule a COVID-19 vaccination appointment on their behalf, without consent. The complainants believed the use of their PHI for this purpose may be in contravention of the *Health Information Privacy and Management Act* (HIPMA).

We opened two files, one for each complainant, but because they were spouses and the issue was identical in each case, we obtained permission to manage the files together.

The complainants said that in April 2021, they each received an automated email from the Government of Yukon confirming an appointment for a COVID-19 vaccination. This was a concern to the complainants because neither of them had requested a vaccination appointment, nor had they ever contacted the COVID-19 vaccination clinic.

The PHI at issue included names, email addresses, and Yukon public health insurance plan card numbers.

Our investigation found no evidence to support that the custodian had used the complainants' PHI as described in the complaint. Instead, the custodian stated that the vaccine appointments were scheduled on the complainants'

behalf by a third party acting in bad faith, using erroneous information.

To prevent a recurrence, the custodian added the complainants' email addresses to the "blocked" list within the vaccination booking system. With respect to the complainants' underlying concern, the custodian confirmed it is not scheduling vaccine appointments for Yukoners without their consent and has no intention of doing so.

Our office also made several observations to the custodian regarding the vaccine appointment booking system (CanImmunize).

During our conversations with the custodian regarding this file, it was confirmed that none of the information entered into the COVID-19 vaccine booking system is validated, including individuals' health card numbers, and there is currently no auditing of the system.

HIPMA (Section 52) requires that custodians make 'every reasonable effort to ensure' that the PHI they collect is accurate. As well, custodians may only collect the minimum amount of PHI that is reasonably necessary to achieve the purpose for which it is collected (Section 16) and must ensure the integrity of the PHI in its custody or control (Section 19). With this in mind, our investigator observed to the custodian that it may want to evaluate whether its current practices with respect to CanImmunize comply with its obligations under HIPMA.

EXAMPLE 3

In June 2021, our office received a complaint raising concerns that the Department of Health and Social Services, the custodian in this case, had disclosed personal health information (PHI) without consent. The complainant was concerned the disclosure may be contrary to the *Health Information Privacy and Management Act* (HIPMA).

The complainant is a teacher at a local school. In June 2021, the Yukon Chief Medical Officer of Health sent a letter to the school's parents, students, guardians and staff, in which the complainant was specifically named. A copy of the letter was also posted to the Yukon government's COVID-19 exposure notice page.

The complainant stated that similar exposure notices for other schools did not include the names of specific teachers. She wanted to clarify why she and other teachers at her school were personally named, while teachers in other schools were not.

Our investigation found that the custodian did have authority to disclose the PHI in question without consent under Subsection 58 (h) of HIPMA. The subsection authorizes this type of disclosure if the custodian reasonably believes that it will prevent or reduce a risk of serious harm to the health or safety of others, or will enable the assessment of whether such a risk exists.

Regarding the decision to name specific teachers, the custodian provided sufficient evidence and rationale to support that in certain circumstances, this was the most effective way to ensure that critical information was communicated to parents/guardians as clearly as possible.

Our investigator was satisfied that the custodian did fulfill its obligations under HIPMA with respect to this case.

EXAMPLE 4

In September 2021, our office received a complaint regarding the Department of Health and Social Services (HSS), the custodian in this case, and the Yukon government's COVID-19 Proof of Vaccination Credential (PVC) system.

Individuals who wanted to obtain their proof of vaccination credential had an option for electronic delivery of the PDF document to an email address. The PDF document contains that individual's personal health information (PHI) including their name and date of birth.

The complainant was concerned because regular email is an insecure method of document delivery. The data is not encrypted through transmission and may be vulnerable to interception by a third party. The complainant felt that if the government was going to offer this option, users should be notified of the risks involved with selecting this option. They suggested adding a checkbox informing users that electronic email delivery is a non-secure method of sharing documents, and that email may be intercepted by an unknown third party.

The department explained that in its view, the use of insecure email to send the PVC met the requirements of the *Health Information Privacy and Management Act* (HIPMA) because there was a disclaimer at the bottom of the page advising individuals that information sent via regular email is not secure. As well, the department had added a tag advising users that direct download is the recommended method of delivery, and there was information in the FAQ section, explaining why direct download is recommended over email or postal delivery. The department also indicated that in their view, the risk of interception was "quite low."

After reviewing HIPMA and its Regulations, our investigator found that nothing in HIPMA allows a custodian to knowingly use an insecure method of transmission of an individual's PHI. HIPMA states that custodians have an obligation to secure PHI. This is outlined in Section 19(1) of HIPMA which states "a custodian must protect personal health information by applying information practices that include administrative policies and technical and physical safeguards that ensure the confidentiality, security, and integrity of the personal health information in its custody or control."

Regarding the complainant's suggestion that a checkbox be added to the website allowing a user to "consent" to the delivery of the PVC document by unencrypted email, our investigation found that this would not be sufficient. HIPMA does not allow custodians to waive their obligations, even if an individual consents.

We recommended to the department that it either stop offering the option

to receive the PVC by email (and offer direct download only), or that it find a way to ensure the PVC document is transmitted securely through encryption or another form of secure file transfer. (The Information and Privacy Commissioner had made this same recommendation to the department in her comments regarding the privacy impact assessment submitted to the commissioner's office for the vaccine credential system.)

In response to our recommendation, the department removed the option for users to receive the PVC through unsecured email.

EXAMPLE 5

Our office received a complaint about the manner in which the Department of Health and Social Services (HSS), the custodian in this case, collects copies of birth certificates. Specifically, the complainant was concerned with the process followed when the complainant sought to register their child for the Yukon Health Care Insurance Plan (YHCIP) with the Insured Health and Hearing Services branch. The complainant stated that the custodian had requested that a copy of the birth certificate be provided by unsecured email.

A birth certificate contains personal health information, which is being collected by HSS. As a custodian under the *Health Information Privacy and Management Act* (HIPMA), HSS must comply with HIPMA for this collection. Therefore, our investigator proceeded under HIPMA.

Section 19 of HIPMA requires that certain practices be followed regarding the handling of personal health information. Given that email is not a secure means of communicating, one such practice is to avoid exchanging (or collecting) personal health information with the public by email. In cases where there is a desire to submit personal health information digitally, our assessment is that it should be done using a secure file transfer (SFT) system, or an equivalent.

Our office made several recommendations and, as a result, the custodian began collecting this information by SFT and ensuring that applicants to YHCIP are made aware of this option (and are also made aware that email may not be secure).

Further, the custodian updated its registration manual (containing its internal procedures) accordingly. As the individual responsible for this particular incident was a new staff member, the custodian also committed to ensure that staff are trained on these updated procedures so that they can operate in compliance with HIPMA.

EXAMPLE 6

In January 2021, our office received a complaint about a psychiatrist, the custodian in this case, who works at a clinic in Whitehorse. The complainant had made an application for access to their personal health information (PHI). When the applicant came to us, they raised concerns regarding the adequacy of the search for responsive records in the custodian's custody or control and alleged that their complete medical records were not provided as requested.

The applicant noted that their access request was dropped off at the custodian's office in late November and they picked up the responsive records in mid-December. Only two records were provided. When the applicant enquired with staff at the clinic about the limited information provided, they were told "this is what the doctor provided". The complainant did not feel this was a satisfactory explanation.

The applicant was seeking copies of their complete medical records, and if this was not possible, they wanted to understand why.

We reached out to the custodian, who informed us that the applicant had been provided with a summary of their medical records, as opposed to actual copies. The custodian explained that typically physicians provide a summary because "there are some technical terms in notes that an untrained person might misinterpret. …a summary is better, in that a person is not bogged down with excess information. It is safer practice of medicine to do it this way..."

Our office noted to the custodian that while a summary might be appropriate and acceptable in some circumstances, this should be confirmed directly with applicants, rather than assuming that a summary would meet their needs. We also took the opportunity to remind the custodian that upon request, HIPMA requires custodians to clarify any word, code or abbreviation used in the records that may be unintelligible for a lay person.

As noted, the custodian in question was a psychiatrist. We acknowledged that there may be considerations unique to the field of psychiatry when considering the release of records in response to an access request and advised that upon request, our office could provide guidance on the application of HIPMA in a given circumstance.

To resolve the file informally, the custodian accepted the following recommendations.

- The custodian will make arrangements to provide the requested medical records to the applicant.
- Within 30 days, the custodian will develop and implement a written procedure for managing access requests that meets the requirements of HIPMA.

The custodian provided the applicant with their records within a few days and provided us with a copy of their written procedure for managing access requests.

EXAMPLE 7

In February 2021, we received a complaint regarding concerns that the Yukon Hospital Corporation (YHC), the custodian in this case, disclosed personal health information (PHI) to a third party, contrary to the *Health Information Privacy and Management Act* (HIPMA).

The complainant stated that from October to December 2020, his mother was a patient at Whitehorse General Hospital. He was acting as her substitute decision maker in regard

to her health care. During this period, he said that hospital employees repeatedly disclosed his mother's detailed PHI to an insurance provider based in the United States, without his consent. It was his belief that this disclosure may have been contrary to HIPMA.

Our investigation found that YHC had authority under HIPMA to disclose the PHI to the U.S.-based insurance provider. There was sufficient evidence to demonstrate that the complainant consented to the disclosure of this information and had not withdrawn his consent in accordance with the requirements of HIPMA. We concluded that the custodian had met its obligations under HIPMA with respect to the disclosure of the PHI at issue.

The evidence provided by the custodian demonstrated that it made efforts to address the complainant's concerns about the disclosure of information by the hospital to the insurance provider. However, in our view, there may have been an opportunity for the custodian to have a fuller and more frank discussion with the complainant, including specifics on how to withdraw consent, and what the reasonably foreseeable consequences would have been.

As a result, we made an observation to the custodian, that when a person expresses concern or hesitancy regarding the collection, use, or disclosure of their PHI, the custodian and its agents should consider providing them with specific information on how to withdraw or place limits on their consent in accordance with HIPMA, and the reasonably foreseeable consequences of doing so.

No recommendations were made to the custodian in this case.

EXAMPLE 8

Our office received a complaint regarding a medical clinic in Whitehorse. The complainant believed that the clinic was not meeting its obligations under the *Health Information Privacy and Management Act* (HIPMA). The complainant was concerned that the clinic had not taken reasonable measures to ensure that its staff comply with HIPMA and its Regulations; that staff access to personal health information was not controlled in a manner compliant with HIPMA; and that the clinic had not fulfilled its obligations relating to a recent privacy breach.

Given the scope of the allegations, this complaint allowed our office to thoroughly examine the clinic's operations. We were also able to examine Plexia, the clinic's electronic medical records system. We evaluated that system and noted issues with how it had been implemented.

We found that although the clinic had taken steps to become compliant with HIPMA, these steps were generally not sufficient to meet an array of obligations and we identified several areas of concern. The clinic was co-operative with our office and remained interested in working toward solutions throughout our investigation.

We made several recommendations, including that the clinic create clear policies and procedures to provide guidance to staff on their obligations under HIPMA; develop and implement proactive training on HIPMA; develop a thorough compliance audit process; implement changes to the way user activity is recorded within Plexia; and make specific changes to internal processes to ensure that they are compliant with HIPMA.

During this process, we also shared with the clinic our HIPMA Toolkit for Small Custodians and our HIPMA Audit Tool and they made use of both these resources.

The clinic accepted all recommendations and has implemented them.

Our office also opened a separate file to evaluate the clinic's response to the privacy breach noted in the complaint.

EXAMPLE 9

Our office received a complaint from an individual who had requested their own personal health information, which was held by the Department of Health and Social Services, the custodian in this case. When the person received the information, some parts of the responsive records were severed under Section 27 (1)(b) of the *Health Information Privacy and Management Act* (HIPMA). This provision requires that a custodian refuse to disclose any parts of an individual's personal health information where that information would also reveal third party information. (The custodian is still required to release as much information as possible.)

The complainant argued that nothing would be "revealed" to them by releasing the third party information, as the complainant was already aware of what the contents of the records were (for example, in cases where the records contained details of things said by the complainant). The complainant felt that Section 27(1)(b) therefore did not apply.

As part of our investigation, we considered the complainant's argument regarding the word "reveal". Ultimately, their interpretation was, in our view, inconsistent with other interpretations, and we did not find any case law to support their position. The investigator concluded that "reveal" should be interpreted in this context to mean "disclose information about".

Nonetheless, our investigation concluded that the custodian had withheld too much information, and that some of the information withheld was either not about a third party or did not reveal anything that might constitute personal information. We recommended the release of this information, and the custodian provided an amended response.

EXAMPLE 10

In December 2021, a complainant came to our office with concerns about the Yukon Hospital Corporation (YHC) response to their request for access to video footage dating back to July 2020. In particular, they were concerned that the hospital had not conducted an adequate search for records.

The complainant had spent some time as a patient in the Secured Medical Unit of the Whitehorse General Hospital (WGH) during the summer of 2020. During this time there were several incidents where force was used against them. Many months later, the complainant made an access request through their lawyer to obtain all footage from WGH of the 'use of force' incidents. They were advised that video footage is only kept for 30 days, and as such, no responsive footage was available. The complainant strongly believed that at least some footage still existed and wanted the hospital to doublecheck.

Our investigator reached out to the chief privacy officer at YHC. We asked about the hospital's video retention policy and asked the privacy officer to consult with staff and double check all locations to determine whether any responsive records might have been saved.

We also reviewed the response provided to the applicant to ensure the custodian had met its obligations under the *Health Information Privacy and Management Act* (HIPMA).

When responding to an access request, custodians must comply with Subsection 26 (4) of HIPMA, which outlines what information must be included in a response to an applicant, including, "…if a record containing the requested personal health information does not exist or cannot be found, so informing the applicant." As well, custodians must notify the applicant "… of the identity of any other custodian whom the custodian reasonably believes has the custody or control of the requested personal health information."

Within a few days, we heard back from the chief privacy officer who confirmed that all locations were searched again, that staff were consulted and that they could confirm with certainty that no responsive records existed.

Regarding their video retention policy, the custodian confirmed that in most circumstances, video footage is retained for 30 days, which is primarily dictated by storage capacity. New footage is recorded over old footage. If there is a request for video footage within 30 days, the footage is archived. In most cases, requests come from the RCMP or the Yukon Workers' Compensation Health and Safety Board. When the footage is no longer needed, it is deleted.

Upon review of the custodian's response to the applicant, we were satisfied that they had met their obligations under HIPMA.

When we contacted the complainant to explain the outcome, they were disappointed to learn that no footage had been saved. However, they were satisfied that the custodian had done its due diligence by doublechecking that no records existed.

Our office followed up with the custodian to thank them for having looked into the matter so quickly, which allowed us to resolve the complaint in a timely manner. We also took the opportunity to make a number of observations.

We pointed out that there are some complexities when video cameras are involved. YHC is governed by overlapping legislation (HIPMA, the *Access to Information and Protection of Privacy Act* and the *Personal Information Protection and Electronic Documents Act*), which can complicate matters. We suggested that if YHC has not already done so, it should consider:

- evaluating its authority to collect personal information using video cameras, and under which legislation;
- ensuring that the purpose for collection is clearly defined;
- ensuring its policies and procedures comply with its obligations under the various applicable pieces of legislation;
- developing a policy regarding access to the footage, including by whom, in what circumstances, etc.; and
- ensuring a clearly-defined retention policy is in place.

The custodian believed some of this work had already been done and thanked us for the suggestions.

ATIPPA compliance review activities

Breaches

In 2021, three breaches were reported to the Office of the Information and Privacy Commissioner (IPC) by the Yukon Energy Corporation (YEC). All breaches related to the use of email, in particular, transmitting the wrong document and transmitting email to the wrong recipient(s). The three transmissions included highly sensitive personal information (PI) related to the requirement to attest to vaccine status by employees. All met the threshold for risk of significant harm. YEC took the appropriate steps to assess this risk and worked with our office to identify and reduce the risk of harm and identify measures to prevent recurrence.

It is worthwhile to note that email is one of the most common media that is involved in breaches. Public bodies need to take care to instruct staff handling personal information, including those who email to distribution lists, to take care not to rush such activities and to double check all steps in such a procedure to prevent breaches from happening. Recurring privacy training tailored to workplace activities is the single most important step to maintain awareness and prevent breaches.

Since breach reporting has become mandatory under the *Access to Information and Protection of Privacy Act* (ATIPPA) after this new Act went into effect in April 2021, five breaches were reported. These include the three by YEC and one each by the Department of Environment and the Department of Finance.

In the case of the Department of Finance breach, envelopes with oversized windows were used to mail T4/T4A slips to employees of the Yukon government, which resulted in the ability to see the social insurance numbers of the individuals affected without opening the envelope. In the case of the Department of Environment breach, an individual entered the wrong client code into the online portal and received a special guide license issued in another person's name. Both public bodies took the appropriate measures to address the breaches, including reporting to our office, notifying the affected individuals as necessary, and working with us to identify and implement measures to prevent recurrence.

Common mistakes or accidents, such as those reported by YEC, can occur in day-to-day operations of public bodies. The larger the organization, the more likely breaches are to occur. The likelihood of larger numbers of employees being involved in similar processes also increases. Based on those assumptions, we would have expected to receive several breach reports from other public bodies as well. Given the absence of more breach reports, the IPC is very concerned that breaches are going undetected, that employees are not aware of their obligations under ATIPPA regarding breach reporting, or that breaches are otherwise not being reported to our office. Our office is taking this opportunity to remind all public bodies that policies and procedures regarding breach reporting should be developed and implemented and, more importantly, these policies and procedures should be part of a recurring training program tailored to the work processes of employees working with PI.

We received two breach notifications under HIPMA in 2021. Both were from a local medical clinic. The breaches reported were very serious as they involved an employee snooping in electronic patient records. The clinic provided us with the notices, as required, and notified two individuals about the breach of their highly sensitive personal health information. The medical clinic worked cooperatively with us through this process and implemented measures to prevent recurrence.

PIAs

Our office worked with numerous public bodies on the completion and improvement of their privacy impact assessments (PIAs). One area that we are looking at is the Department of Highways and Public Works (HPW) adoption of Digital Identity

Management to enable future digital service provision to Yukoners. We know that this project is underway, and we expect to receive a draft PIA in 2022. The use of a digital identity management solution has the potential to impact the provision of services and has privacy implications for many current programs and activities. If executed well, such a service can enable stronger privacy protection and security safeguards for programs and activities across government.

We also continued our consultations with HPW as the department procures Microsoft Office 365. We provided advice regarding its contracting with Microsoft as it related to the department's duties under ATIPPA and for other duties regarding compliance with ATIPPA. We are still waiting for HPW to submit a PIA to our office on the implementation of Office 365.

Our office also reviewed several PIAs submitted that are related to the management by public bodies and custodians of services delivery during the pandemic and for other purposes, such as vaccine verification, related to the pandemic. Some of the detail associated with these PIAs are addressed in the IPC message at the beginning of this annual report.

Outreach and guidance regarding HIPMA, ATIPPA & other matters

The Yukon Information and Privacy Commissioner (IPC) marked Data Privacy Day on January 28, 2021 by launching a new section on her website to promote awareness amongst children and teenagers of the need to protect their online privacy.

In late February, the IPC and one of her staff met virtually with members of the Academic Senate of Yukon University to make a presentation and answer questions about the *Access to Information and Protection of Privacy Act* (ATIPPA). The presentation included information on what ATIPPA requires of the university in regard to the protection and use of student and employee data, as well as the top issues that have arisen during the COVID-19 pandemic due to the increased use of digital workspaces and online learning environments.

In April, the IPC launched a new resource, a toolkit to help small custodians navigate the territory's *Health Information Privacy and Management Act* (HIPMA). This toolkit breaks down the various requirements in HIPMA that custodians must comply with, provides easy-to-understand scenarios and helps custodians to create required notices and other required documentation and templates. The toolkit will be distributed as part of the registration process when custodians register their practice with the Regulatory Affairs branch of the Department of Community Services. In this way, each new custodian in the territory will be made aware of its obligations under HIPMA and has a helpful and easy-to-use tool.

As part of Privacy Awareness Week in early May, the Privacy Commissioner of Canada and the Yukon IPC co-wrote an op-ed for Yukon newspapers, in order to create greater awareness of privacy laws affecting businesses and other organizations.

Later in May, the Yukon IPC joined other privacy commissioners from across Canada to issue a statement on vaccine passports, emphasizing that such passports or other similar documents must meet the highest level of privacy protection and outlining key issues that should be considered and principles to be followed as vaccine passports are introduced.

In early June, the IPC joined her counterparts across the country in a joint resolution, which calls on their respective governments to uphold Canadians' quasi-constitutional rights to privacy and access to information, taking note of the impact the COVID-19 pandemic has had on these rights.

In mid-June, Ombudsman and Privacy Commissioners in the Yukon and British Columbia called on governments to adopt a framework for responsible use of artificial intelligence (AI) decision-making that includes the need to protect fairness and privacy when AI is used in public service delivery. A special report released by the three offices, *Getting Ahead of the Curve,*

was tabled in both the Yukon and B.C. legislative assemblies.

In September, to mark Right to Know Day and Week in the Yukon, the IPC wrote an op-ed for Yukon newspapers, providing information to Yukoners about significant changes that come with the new access and privacy legislation that went into effect earlier in 2021.

In November, to increase awareness of the privacy risks inherent in shopping, and to show how to reduce them, the IPC once again issued a holiday shopping tips sheet. In addition, one of her staff created a video, demonstrating ways to help ensure you are not fooled by online fraudsters, which was posted online.

In December, the IPC issued an advisory to assist Yukon organizations, in particular custodians and public bodies, in learning about a recent security threat, which could affect users of a logging utility in the Java programming language.

In addition, the IPC has published various pieces of guidance to advise public bodies on recent developments and their obligations under ATIPPA. An example is guidance on developments in ransomware.

Our office also provided feedback on various templates and tools provided to us by the ATIPP Office, including the Designated Privacy Officer (DPO) toolkit and the information management agreement template. We are encouraged to see that the ATIPP Office is working on operationalizing new requirements under the new ATIPPA.

In 2021, the IPC also updated the HIPMA audit tool. This tool was developed by our office in 2018 to help custodians comply with their obligation to audit their information security practices as required by HIPMA. This tool, together with the notice of said obligation, has been sent out to all large custodians in the territory.

HIPMA compliance review activities

Breaches

Under the *Health Information Privacy and Management Act* (HIPMA), custodians are required to report to our office if a breach of personal health information occurs that may result in a risk of significant harm to any individual. In all of 2021, just one breach was reported. This breach involved the Departments of Highways and Public Works (HPW) and Health and Social Services (HSS) and related to a phishing incident. This incident was caused by compromised email accounts and resulted in the unauthorized collection of thousands of email addresses and the subsequent transmission of thousands of phishing emails from HPW's servers to these email addresses.

Our investigation identified that HPW could have done more to prevent this breach from happening, including implementing a variety of technical controls that mitigate or reduce the impact of such a breach. Examples include two-factor authentication, limitations on sending massive amounts of email from one account and outbound spam filtering. HSS should work on addressing security performance issues via their Service Level Agreement with HPW.

PIAs

The Department of Health and Social Services (HSS) provided us with several PIAs in 2021. HSS has been working on various PIAs related to COVID-19, including systems and programs for the provisioning of proof of vaccination credentials, scheduling of vaccinations and COVID-19 tests, and provision of healthcare via Zoom. The IPC has provided recommendations regarding these PIAs and is working with the department to ensure compliance with HIPMA. Even if some of these systems become inactive or suspended due to COVID-19 becoming accepted as an endemic disease, we suggest that HSS retains the blueprints, including PIAs, of these programs and systems for potential use in the future. The department also announced it is working on updating the Panorama PIA which has been long overdue.

Another PIA that both HSS and the Yukon Hospital Corporation are working on is the OneHealth project. This project looks to overhaul several existing

information systems in use by these custodians and to modernize healthcare service delivery to Yukoners. Although we have received a high-level draft PIA and have been given presentations on progress made on this project, we have not seen a comprehensive PIA nor enabling regulations yet.

HOW WE MEASURED UP IN 2021

Skills development

In early February, the Information and Privacy Commissioner (IPC), her Deputy and other staff and other investigators took part in a two-day conference hosted virtually by the Government of British Columbia. It focused on networking and training on topics relating to privacy and security.

The IPC and her Deputy also took part in monthly meetings of IPCs across the country, including those working in federal, provincial and territorial jurisdictions, to share information on various topics and challenges facing access and privacy in Canada. In November, the IPC, her Deputy and all investigators participated in a federal/provincial/territorial investigators' conference that took place over two half-day sessions.

The IPC and her Deputy attended quarterly meetings of the Canada Health Infoway Privacy Forum, whose membership is comprised of employees of governments across Canada and representatives from all IPC offices in Canada.

In April, staff took part in a "brunch and learn" session hosted by the British Columbia IPC, which presented an overview of threats to Canada's national security.

In May, staff attended a session on privacy in the age of COVID-19 hosted by the British Columbia IPC. During this month, the team also attended a lecture on the history of surveillance, hosted by the University of Calgary.

In June and September, legal staff attended Canadian Bar Association webinars covering topics such as the Canadian privacy landscape and privacy vs innovation.

In September, the IPC and some staff attended a North of AI panel, held virtually and hosted by Tech Yukon, which focused on how artificial intelligence (AI) can help businesses, governments, and front-line service organizations.

In November, some staff attended a Canadian Bar Association virtual conference on access to information and privacy.

The IPC office also held in-house training sessions throughout the year for all staff on various aspects of information security.

Complaints against the Information and Privacy Commissioner

None

STATISTICAL REPORTING UNDER PREVIOUS ATIPPA, PRIOR TO MARCH 31, 2021

ATIPPA - 2021 activity	
Resolved at intake - no file opened	
Requests for information	6
Early complaint resolution	3
Non-jurisdiction	0
Referred-back	0
Total	**9**
Files opened by type	
Complaint - access	4
Requests for comment	1
Inquiries	0
Requests for decision	0
Total	**5**
All files opened in 2021	5
Files carried over from previous years	95
Files closed in 2021	26
Files to be carried forward	**74**

ATIPPA informal case resolution - complaint

Closed (within 90 days)	0
Closed (over 90 days)	0
Still open (under 90 days)	0
Still open (over 90 days)	0

ATIPPA informal case resolution - access

Settled (within 90 days)	4
Still open (within 90 days)	0
Closed (over 90 days)	0
Not settled (formal hearing)	0

ATIPPA inquiry

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

ATIPPA files opened in 2021 by public body							Recommendations		
Public body	Number of files						Formal*	Accepted	NYI - Not yet implemented (includes from prior years) or FTF - failed to follow
	Investigation complaints	Decision	Comments	Review	Inquiry	Total			
Department of Environment				1	2	3	7	0	
Department of Health and Social Services				1		1			
Department of Justice				1	1	2	1	0	
Public Service Commission			1			1			
Yukon Workers' Compensation Health and Safety Board				1		1			

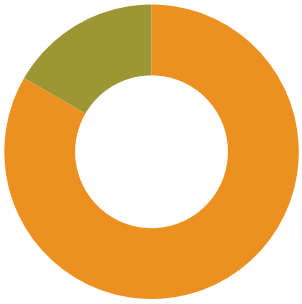
*Formal recommendations are those made by the IPC in an Inquiry or Investigation Report in 2021.

STATISTICAL REPORTING AFTER NEW ATIPPA IN FORCE, MARCH 31, 2021

ATIPPA - 2021 activity	
Resolved at intake - no file opened	
Requests for information	71
Early complaint resolution	19
Non-jurisdiction	16
Referred-back	10
Total	**116**
Files opened by type	
Requests for advice	2
Requests for comment	2
Complaint - access	21
Complaint - privacy	15
Adjudication	1
Compliance - deemed refusal	8
Compliance - privacy breach	5
Compliance - audit	1
Requests for decision	0
Total	**55**
All files opened in 2021	55
Files carried over from previous years	N.A
Files closed in 2021	41
Files to be carried forward	**14**

ATIPPA informal case resolution cases

Closed (within 60 days)	30
Closed (over 60 days)	0
Still open (under 60 days)	6
Still open (over 60 days)	0



ATIPPA adjudications

Closed (within 90 days)	0
Closed (over 90 days)	1
Still open (within 90 days)	0
Still open (over 90 days)	0

ATIPPA files opened in 2021 by public body

Public body	Number of files							Recommendations		
				Compliance						
	Informal investigation complaints	Decision	Comments/ Advice	Deemed refusal notices	Privacy breach	Audit	Adjudication	Total	Formal*	Accepted	NYI - Not yet implemented (includes from prior years) or FTF - failed to follow
Department of Community Services	3			1				4			
Department of Education	4			4				8			
Department of Energy, Mines and Resources	3							3			
Department of Environment	3			1	1			5			
Department of Finance					1			1			
Department of Health and Social Services	3			1				4			
Department of Highways and Public Works	3		2					5			
Department of Justice	2						1	3	5	1	
Executive Council Office	3							3			
Public Service Commission	11		1			1		13			
Yukon Energy Corporation			1		3			4			
Yukon Housing Corporation	1							1			

*Formal recommendations are those made by the IPC in a formal Adjudication Report Issued in 2021.

ATIPPA compliance review activities

Public body	PIA submitted	Year submitted	Status A - Accepted NYA - Not Yet Accepted NR - No Review
Department of Finance	Online Accounts Receivable Payments	2016	NYA
Department of Highways and Public Works	O365	2021	NR
	Vaccination verification app	2021	NYA
	Infolinx	2020	NYA
	MyYukon Service digital ID		NYA
Public Service Commission	Vaccination Info in PeopleSoft	2021	NYA
	People Soft	2019	NYA
Yukon Energy Corporation	Client Billing Portal	2021	NYA

HIPMA compliance review activities

Custodian	PIA submitted	Year submitted	Status A - Accepted NYA - Not Yet Accepted NR- No Review
Department of Health and Social Services	Remote Patient Care	2020	NYA
	Sample Manager Laboratory Management Information System	2020	NYA
	Panorama	2021	NYA
	Zoom for Health Care	2021	NYA
	Family Case Management System	2021	NYA
	Online COVID-19 Test Results Checking	2021	NYA
	Border Vaccine Verification	2021	NR
	MEDEVAC Application	2021	NYA
	Septic Disposal Permitting System	2021	NYA
	CanImmunize Scheduling Supplemental PIA	2021	NYA
	COVID-19 Proof of Vaccination Credential	2021	NYA
	OneHealth Long Term Care Addendum	2021	NYA
Yukon Hospital Corporation	OneHealth	2021	NYA

HIPMA - 2021 activity

Resolved at intake - no file opened	
Request for information	43
Informal complaint resolution	5
Non-jurisdiction	2
Referred-back	5
Total	**55**
Files opened by type	
Consideration files opened	0
Request for comment	4
Request for advice	5
Complaint - access	3
Complaint - administration	2
Complaint - privacy	6
Compliance audits	1
Breach notices	2
Total	**23**
All files opened in 2021	23
Files carried over from previous years	44
Files closed in 2021	25
Files to be carried forward	**42**

Informal case resolution

Settled (within 90 days)	12
Still open (within 90 days)	0
Not settled (formal hearing)	0

HIPMA files opened in 2021 by custodian

Recommendations

Custodian	Number of files					Formal*	Accepted	Not yet implemented (NYI) (includes from prior years) or failed to follow (FTF)
	Complaints		Comments	Request for advice	Total			
	Informal resolution	Consideration						
Department of Health and Social Services	7				7			
Health facility - medical	1		4	5	10			
Health facility - psychiatry	1				1			
Yukon Hospital Corporation	2				2			

*Formal recommendations are those made by the IPC in a Consideration Report issued in 2021.

Yukon
Public Interest
Disclosure
Commissioner

2021 ANNUAL REPORT OF THE YUKON PUBLIC INTEREST DISCLOSURE COMMISSIONER

The Honourable Jeremy Harper
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 2021.

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

Kind regards,

Diane McLeod-McKay,
Yukon Public Interest Disclosure Commissioner

OVERVIEW OF OUR WORK

In 2021, we opened just two files under the *Public Interest Disclosure of Wrongdoing Act* (PIDWA), which is down from the 11 that we opened in 2020. One of these files is an investigation file. Although we opened fewer files in 2021 than in the previous year, we carried 15 files forward from 2020. We were able to close three files in 2021, leaving us with 14 files that we will continue to work on in 2022.

At the end of 2021, we had not yet completed our two reprisal investigations. We anticipate that we will finalize these investigations in 2022. The majority of our files carried forward from 2021 are advice files that we will continue to work on in 2022.

As I indicated in my 2020 Annual Report, as part of our process under PIDWA, we strongly encourage any person who contacts our office alleging wrongdoing to seek advice about whether what they are alleging may be a wrongdoing. In conducting this work, we analyze the allegation and evaluate whether it could be a wrongdoing as that term is defined in PIDWA.

We included this step in our process in recognition that the risks for disclosers are significant, even with reprisal protection. By providing these individuals with this advice, it allows them to decide whether they wish to proceed to make a disclosure. Very few advice files lead to disclosures of wrongdoing for a multitude of reasons.

Update on the *Special Report, Allegations of Wrongdoing in the Delivery of Group Home Care, April 10, 2019*

In 2020, I received the Department of Health and Social Services' response to the recommendations I made in my Special Investigation Report dated April 10, 2019. Having reviewed the department's response along with documentation it provided in support of its activities associated with the implementation of the recommendations, I am satisfied that they have implemented all but two of the recommendations, 7 and 18 (b).

Recommendation 7 was to train group home employees and other employees of Family and Children's Services, as applicable, such that they are informed about any new modifications to policy and procedures or other documents developed as a result of recommendations 3, 4 and 5. Recommendation 18 (b) was to inform me within 18 months of receiving the report to provide evidence that it has complied with Recommendation 7. This timeline expired on October 10, 2020. As of the end of 2021, we had not heard anything from the department about these last two recommendations.

The department also reported in 2020 that it was in the process of addressing all the observations made in the Special Investigation Report, which is positive. The information the department provided satisfies me that they have done this work with the exception of three observations made about PIDWA and the *Ombudsman Act*. They are as follows.

Observations about PIDWA and the *Ombudsman Act*

PIDWA procedures, disclosure procedures and the PIDC's investigative powers

The Legislature has included in PIDWA the ability of a Department to adopt its own procedures for managing disclosures.

> *5 (1) A chief executive may establish procedures to manage disclosures by employees of the public entity for which the chief executive is responsible.*

During the second reading of Bill No. 75, Public Interest Disclosure of Wrongdoing Act, Mr. Silver (now Premier), as recorded in Hansard, stated when referring to section 5 (1), "the fact that adopting procedures are not required will likely result in many departments or organizations not adopting such procedures as it will not likely be a priority for them. So we're looking for the Minister to explain why these are not mandatory."

Communications by the Department about the procedures under PIDWA demonstrated confusion about the protections afforded to employees thereunder, including that a disclosure must follow the process set out in PIDWA. A failure to have proper disclosure procedures in place puts employees at risk who are courageous enough to bring a matter forward. Proper procedures ensure confidentiality and anonymity for the discloser, which is critically important for reprisal protection. Additionally, an employee who fails to follow proper procedure in reporting wrongdoing may not be afforded the protection of PIDWA. In my view, this is serious.

Given the foregoing, the Department should consider working with the PIDC to develop disclosure procedures. If disclosure procedures are developed, the Department should ensure that its employees are sufficiently trained on them.

PIDC's authority to obtain information

It became abundantly clear during this investigation that there is a significant difference of opinion between my office and the Yukon government as to the powers of the PIDC to obtain records and interview witnesses.

During the investigation, requests for the production of records and requests for employee witness interviews were vigorously met with numerous legal challenges by Yukon government lawyers. The Department refused access to certain records and insisted on having legal counsel present during interviews of some employees, both of which are problematic. While I understand the importance of the Yukon government protecting its legal rights, the exercise of these rights

must not, in my view, be an obstacle to the ability of the PIDC to conduct a thorough investigation under PIDWA. This is particularly so given that the PIDC is charged under PIDWA with the responsibility to conduct investigations into allegations of wrongdoing that soundly are in the public interest.

What occurred in this investigation clearly identifies the need for the authority of the PIDC in PIDWA to be

reviewed and clarified. I note that section 55 requires the Minister to begin a review of PIDWA within five years of it coming into force. PIDWA was proclaimed in force on June 15, 2015.

At the writing of this Report, the Public Service Commission announced that it is preparing guidelines on disclosure procedures that a public entity could follow to ensure that its employees are protected by PIDWA and that disclosures made to the public entity by its employees are done in accordance with PIDWA.

Ombudsman Act – Own motion investigations

During the course of this investigation, although wrongdoings were found for one of the allegations made, many of the issues identified by the disclosers, as well as those that came to light during the investigation, were more about policy, procedure, and the availability of resources. These types of issues are, in my view, much better dealt with under the provisions of the Ombudsman Act, which is focused on 'matters of administration'. The persons who brought the issues to our attention could not, however, make a complaint under the Ombudsman Act as they were not directly affected by the wrongdoing; that is, they were not an affected person in their personal capacity, pursuant to section 11. The Ombudsman, on their own motion, could not examine these issues.

In other jurisdictions with Ombudsman legislation, this does not present a problem as the Ombudsman can commence an investigation on their own initiative. For instance, in British Columbia's Ombudsperson Act, section 10 states as follows.

> *10 (1) The Ombudsperson, with respect to a matter of administration, on a complaint or on the Ombudsperson's own initiative, may investigate.*
>
> *This power is especially important in circumstances in which the aggrieved party, because of tender age, developmental disability, lack of freedom, or other reason, may not be able to complain on their own behalf. I intend to raise this issue with the Speaker of the Legislative Assembly, as they are responsible for the Ombudsman Act.*

In the letter received from the department in September 2020, it indicated that it had forwarded these observations to the Public Service Commission (PSC), which is responsible for PIDWA, and that someone from the PSC would be in contact with my office. I did not hear from the PSC in 2020 or in 2021 about these observations. However, the PIDWA review was launched in 2020 and we are participating in that process. As such, I will address these matters during the review process.

As for the *Ombudsman Act,* we have been waiting for the Supreme Court decision (referenced in the Ombudsman message) to determine what recommendations we will make concerning that Act.

Update on goals

6. to increase the understanding by public entities and employees about what a disclosure is, how to make one, and reprisal protection.

8. to participate in the review of PIDWA.

In 2021, we began preparing our comments for PIDWA. I was contacted by the Public Service Commissioner in the fall of 2021 about the review process and we were invited to comment on the work done by the PSC for Phase one of its review process. We look forward to working with the PSC on the next phase of its review of PIDWA. Some of the recommendations that we have formulated in draft for the PIDWA review will address goal 6.

Concluding remarks

In the *How we measured up* section of this report, you will find additional detail about our performance in carrying out our duties under PIDWA.

Diane McLeod-McKay
Public Interest Disclosure Commissioner (PIDC)

HOW WE MEASURED UP IN 2021

Skills development

The Public Interest Disclosure Commissioner (PIDC) once again organized and hosted the annual meeting of her colleagues from across the country, held in September 2021. For the second year in a row, the Yukon PIDC hosted the meeting virtually, due to the COVID-19 pandemic. The meeting is held annually to facilitate the sharing of best practices, common challenges and potential solutions relating to whistleblower legislation across Canada.

The PIDC and her staff also took part in a number of sessions throughout the year to enhance their skills and knowledge and to improve their ability to deliver on the PIDC mandate.

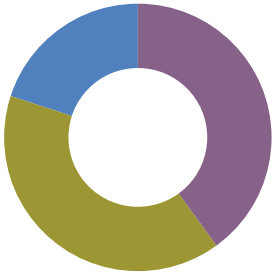
In June, PIDC investigators attended an online workshop hosted by the British Columbia Ombudsperson on interactions with disclosers.

In November, several staff members took part in a webinar on anonymous whistleblower complaints, presented by the Canadian Bar Association.

In December, some staff attended a conference hosted by the British Columbia Ombudsperson, which focused on lessons in whistleblowing.

Disclosure of wrongdoing

Closed (within 1 year)	0
Closed (over 1 year)	2
Still open (within 1 year)	2
Still open (over 1 year)	1



Reprisal complaint

Closed (within 1 year)	0
Closed (over 1 year)	0
Still open (within 1 year)	0
Still open (over 1 year)	2

PIDWA - 2021 activity

Resolved at intake - no file opened	
Requests for information	5
Early complaint resolution	1
Non-jurisdiction	1
Referred-back	0
Total	**7**
Advice files opened	1
Comment files opened	0
Disclosure files opened	1
Reprisal files opened	0
Total	**2**
All files opened in 2021	2
Files carried over from previous years	15
Files closed in 2021	3
Files to be carried forward	14

2021 PIDWA reporting

There are 24 entities subject to PIDWA as set out in the Schedule in PIDWA. All 24 public entities reported that no disclosures were received in 2021.

Complaints against the Public Interest Disclosure Commissioner

None

Files opened in 2021 by public entity — Recommendations

Public entity	Disclosures received and acted on	Reprisal	Comment	Advice	Total	Formal*	Not yet implemented (includes from prior years)
Department of Energy, Mines and Resources	1				1		
Department of Justice			0	1	1		

*Formal recommendations are those made by the Public Interest Disclosure Commissioner in a formal Investigation Report issued in 2021.

Yukon Ombudsman

Yukon Information and Privacy Commissioner

Yukon Public Interest Disclosure Commissioner

Financial report

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, 2021 to March 31, 2022.

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 communications.

For accounting purposes, capital and personnel expenses are reported jointly for the office. The "other" budget lines are the operational costs required for performing the mandated functions under the *Ombudsman Act*, the *Access to Information and Protection of Privacy Act*, the *Health Information Privacy and Management Act* and the *Public Interest Disclosure of Wrongdoing Act*. These costs must be accounted for separately under law and, therefore, are reported separately.

In the 2021-2022 budget, personnel dollars increased mostly attributed to employment benefits, merit and cost of living increases. O&M dollars increased, mostly as a result of new hardware and software costs relating to an upgrade to our case management software and for contract services.

2021-2022 Budget			
Personnel	Joint	$	1,135,800
Capital	Joint	$	5,000
Other	Ombudsman	$	145,400
Other	IPC	$	156,400
Other	PIDC	$	98,400
Total		**$**	**1,541,000**

2020-2021 Budget			
Personnel	Joint	$	1,087,000
Capital	Joint	$	10,000
Other	Ombudsman	$	119,000
Other	IPC	$	130,000
Other	PIDC	$	45,000
Total		**$**	**1,391,000**