

# ipc Access & privacy matters

2013 Annual Report of the Yukon Information & Privacy Commissioner

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## 2013 Information and Privacy Commissioner's Annual Report

### Committed to ensuring compliance by public bodies

I am deeply honoured to serve as your new Information and Privacy Commissioner (IPC).

I have been in the access and privacy field since the mid-1990s and have worked in all sectors (public, private and health) doing this work. I want to assure Yukoners that I will work diligently during my five-year term to ensure public bodies understand and meet the obligations under the *Access to Information and Protection of Privacy (ATIPPA) Act*.

Meeting the obligations of the *ATIPPA Act* is challenging for Yukon government departments, which are defined as "public bodies" under the *ATIPPA Act*. To do so, public bodies need to have in place an access and privacy management program comprised of senior management support, proper resources, policies and procedures, and use of access and privacy risk management tools to evaluate and address non-compliance risk. A proper access and privacy management program is the foundation required to ensure compliance.

My commitment as Yukon's IPC is to work with public bodies to improve compliance through the development of such programs. Ensuring public bodies are positioned to meet their compliance obligations is key to ensuring Yukoners have proper access to information held by public bodies and that public bodies are properly protecting the privacy of Yukoners.

Today, more than ever, personal information is at risk due to the staggering amount of personal information stored in electronic databases. The ease with which large amounts of personal information can be collected, stored, accessed, used, and disclosed through information technology systems presents substantial risks to Yukoners.

A breach of privacy involving one of these systems can have a major impact on Yukoners, particularly where sensitive personal information is involved. The risks to a person, should a breach occur, include identify theft, fraud, embarrassment and other harms. The sharing of information between public and non-public bodies also presents risks to Yukoners. Information about a person could be compiled from numerous databases which could negatively impact on one's ability to receive services. More importantly, a government that compiles a large amount of information about its citizens is engaging in a form of surveillance which impacts on our fundamental right to freedom.

Public bodies must have in place proper access and privacy management programs to reduce these risks. In the case summaries in this

Annual Report are a few examples of privacy breaches that may have been prevented had the public bodies involved had such a program in place.

Throughout my term, in addition to investigating complaints about non-compliance with the *ATIPPA Act*, I will be working with public bodies to help them develop access and privacy management programs, and will report on this progress. I will also be working with my team to implement the recommendations made in the report generated from the organizational review undertaken in 2013 by former Information and Privacy Commissioner Koepke.

### Implementing the report's recommendations

The report generated by last year's organizational and operational review set out several recommendations which we have incorporated as goals into our business plan. These goals are as follows:

#### Goal 1—To build relationships with public bodies, including Yukon government departments, for the purpose of promoting compliance with the *ATIPPA Act*

Since arriving in June of 2013, I have met with the deputy ministers of each department to learn about their access and privacy management programs. At these meetings I shared my approach to working together to improve these programs. Although improvement is needed across government, I was encouraged by the commitments I received to work with our Office towards this objective.

I met with the Chief Information Officer of Highways and Public Works (HPW), the department responsible for administration of the *ATIPPA Act* and the ATIPPA Office, to understand the role of HPW in supporting access to information and protection of privacy across government. I determined that some good work is being done by the ATIPPA Office in managing access to information requests, but that more can be done. In particular there is a need to develop overarching access and privacy policies and procedures, establish training materials, and provide centralized access and privacy expertise. Many other jurisdictions in Canada have centralized resources in place to ensure governments comply with access to information and protection of privacy legislation. My meetings with HPW have been positive and discussion is underway on ways HPW can provide more centralized support.

My team and I met with the ATIPPA Coordinators from various public bodies to discuss compliance challenges and how our Office could promote compliance through guidance. The ATIPPA Coordinators identified areas where they felt guidance would be beneficial. We were able to identify needs and have started developing guidance material to meet them. We plan to meet with the ATIPPA Coordinators on a quarterly basis.

#### Goal 2—To improve our performance

We are currently reviewing our business processes and are making changes as needed to improve how we do our work. We plan to implement a new case management system in 2014. A case management system will help us better manage our work by reducing the time it takes us to manage our intake and case files. It will also help us to identify and address performance issues through its tracking and reporting capabilities.

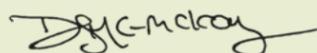
The *Health Information Privacy and Management Act (HIPMA)* passed in December 2013. The responsibility for oversight rests with the IPC, meaning the *HIPMA* will increase our investigative workload and have a significant impact on our resources and our ability to effectively perform our three mandates under the *ATIPPA Act*, the *Ombudsman Act* and now the *HIPMA*. Planning for implementation will also increase the amount of work for our Office.

#### Goal 3—To demonstrate accountability

To demonstrate accountability, this year we will begin capturing more information about our work, such as how long it takes us to complete a mediation, investigation or review, the number and type of contacts and issues we manage, our outreach work, and the public bodies we are investigating. We will report this information in the 2014 Annual Report to provide the public with a better indication of our workload and how effectively we are managing it.

### 18<sup>th</sup> Annual Report

As required by the *ATIPPA Act*, I am submitting this 18<sup>th</sup> Annual Report to the Honourable David Laxton, Speaker of the Yukon Legislative Assembly, who will in turn present it to that body.



Diane McLeod-McKay

**Ombudsman  
Information and Privacy Commissioner**

## Contact us

Call 867-667-8468  
Toll-free 1-800-661-0408 ext. 8468  
Fax 867-667-8469  
Email [info@ombudsman.yk.ca](mailto:info@ombudsman.yk.ca)  
Online [ombudsman.yk.ca](http://ombudsman.yk.ca)  
Address 201 – 211 Hawkins Street  
Whitehorse, Yukon Y1A 1X3

**Case Summaries** These stories are good examples of how our Office helps Yukoners and public bodies, such as Yukon government departments, meet the requirements of the *ATIPPA Act*. Names have been changed to protect privacy.

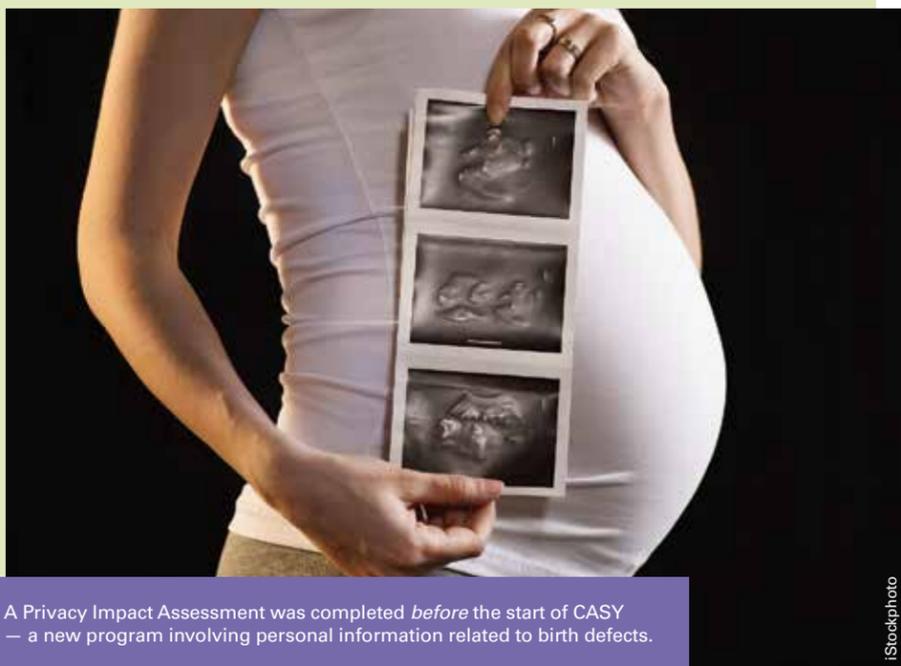
## A successful mediation

### Highways and Public Works

Joe asked Highways and Public Works (HPW) for records that contained information from contractors, or "third parties," concerning the construction of the new F.H. Collins Secondary School.

HPW granted some information in the records but denied access to financial information because it would be harmful to the business interests of the contractors. Joe asked us to review the decision. Mediation is the first step in the review process. In a little more than one month of mediation, HPW decided to grant access to a dollar figure Joe had requested. This figure was provided after the mediator obtained consent from the third parties to release this information. Joe was happy to finally get the information he most wanted.





A Privacy Impact Assessment was completed *before* the start of CASY — a new program involving personal information related to birth defects.

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## Proactive approach applauded

### Health and Social Services

Health and Social Services (HSS) submitted a Privacy Impact Assessment (PIA) to our Office for review.

The PIA was completed before a new program, Congenital Anomalies Surveillance Yukon (CASYS), was started. CASYS involved the collection and use of personal information related to birth defects occurring in Yukon. After a few changes were made to ensure the program properly collected and used personal information in compliance with the ATIPPA Act, the IPC accepted the PIA.



A PIA is a very useful tool that enables a public body to proactively evaluate compliance risks prior to collecting, using or disclosing personal information as part of a program. Our role is to review a PIA submitted by a public body and to identify any compliance issues that need to be addressed by the public body. We applaud HSS, and more particularly the CASY Project Coordinator, Privacy Advisor and project committee for carrying out this proactive compliance work to ensure Yukoners' personal information will be properly protected in accordance with the ATIPPA Act. We hope to see many more PIAs submitted by public bodies for our review in coming years.

## Privacy breaches provoke change

### Education

Frank received an email from a teacher at his child's school.

This teacher also worked in an extra-curricular program in which his child was enrolled, run by a non-profit society. The email was about this program and was in no way school related. Frank wondered how the teacher got his email address as he had not provided it to the program. Frank made a complaint to our Office alleging a breach of his privacy. We contacted the Department of Education to investigate the alleged breach. Education cooperated by following our guide, *Best Practice: Responding to a Privacy Breach*, and reported to us that Frank's email address was accessed by the teacher from school records without authorization, outside her employment as a teacher with the school. Our investigation determined that Education did not have a privacy management policy or procedure that would include a protocol for handling privacy breaches. It was stressed to Education at the conclusion of the investigation that to properly address the risk associated with a breach of personal information, it must have policies and procedures in place and that staff must be trained on these policies and procedures.

### Energy, Mines and Resources

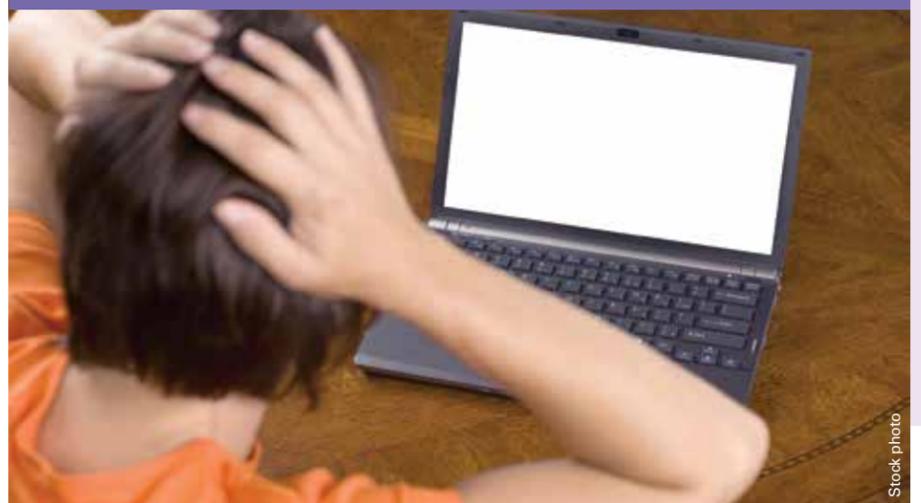
Tina, a government employee who felt strongly about the Peel Watershed, participated in public consultations by emailing her comments to the Department of Energy, Mines and Resources (EMR).

She later realized that all her personal information contained in the email, including her comments, was disclosed on EMR's publicly accessible web pages. Tina complained to our Office that her personal information had been disclosed without her consent. After realizing that posting the personal information of those who responded to the consultation on its web pages was a privacy breach, EMR took immediate steps to contain the breach by removing all personal information of individuals from its web pages. HPW, as the department responsible for the ATIPPA Act, was also involved in this investigation and committed to standardizing a Privacy Breach Protocol for the Yukon government, developing privacy guidance and training to those departments that engage in public consultations, and developing a privacy framework for the government.

Incidents like the ones described in these two summaries demonstrate the need for departments to have a privacy management program in place. Privacy breaches will occur if employees do not understand their responsibility to protect privacy under the ATIPPA Act. We will be developing privacy management program guidance materials for public bodies in 2014.

We look forward to reviewing the material prepared by HPW, and in particular Yukon government's privacy framework. We commend HPW for taking a lead role in developing processes across the Yukon government to protect Yukoners' personal information.

Oh no, a privacy breach! Now what?



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## Statistics

The statistics provided only relate to matters managed by our Office under the ATIPPA Act.

2013 contacts (interactions with our Office requiring action)		Since last Report
Jurisdictional contacts	97	14% increase
Non-jurisdictional contacts	19	27% decrease
<b>Total new contacts</b>	<b>116</b>	<b>16% increase</b>

Files opened		
Requests for review	16	100% increase
Investigation	9	50% decrease
Legislation/program comments	12	14% decrease
<b>Total</b>	<b>37</b>	<b>10% decrease</b>

Files carried forward from 2012		
Requests for review	12	0% increase
Investigation	13	86% increase
Legislation/program comments	22	38% increase
<b>Total</b>	<b>47</b>	<b>34% increase</b>

**Total open files in 2013**      **84**      **11% increase**

2013 files closed		Since last Report
Requests for review	22	175% increase
Investigation	11	8% decrease
Section 43 request	0	100% decrease
Legislation/program comments	14	75% increase
<b>Total</b>	<b>47</b>	<b>62% increase</b>

Files to be carried forward		
Requests for review	6	50% decrease
Investigation	11	15% decrease
Legislation/program comments	20	9% decrease
<b>Total</b>	<b>37</b>	<b>21% decrease</b>

## Budget summary

This budget summary is for the fiscal year of the Office of the Information and Privacy Commissioner, which runs from April 1, 2013 to March 31, 2014.

The budget for personnel and capital items are for the Office of the Information and Privacy Commissioner and Ombudsman combined. In prior years the budget amounts reported were for both Offices and were not reported separately. This year, other than for

personnel and capital item costs, the budget amount for the Office of the Information and Privacy Commissioner is being reported separately and will be reported this way going forward.

The significant increase in personnel costs in the 2013/2014 budget are due to the cost-of-living increases for staff and the salary increase for the Information and Privacy Commissioner and Ombudsman to bring the position from part-time to full-time status.

2012 (combined with the Ombudsman's Office)	
Personnel	\$497,000
Capital items	\$6,000
Office and operations	\$162,000
Supplies and services	\$7,000
<b>TOTAL</b>	<b>\$672,000</b>

2013 (combined with the Ombudsman's Office)		Since last Report
Personnel	\$628,000	26% increase
Capital items	\$2,000	67% decrease
<b>TOTAL</b>	<b>\$630,000</b>	<b>25% increase</b>

2013 (IPC's Office only)		Since last Report
Office and operations	\$94,000	16% increase
Supplies and services	\$5,000	43% increase
<b>TOTAL</b>	<b>\$99,000</b>	<b>17% increase</b>