



Yukon
Information
and Privacy
Commissioner

Procedures for Managing Complaints and Requests for Review under the *Access to Information and Protection of Privacy Act*

I. AUTHORITY

Complaints

Subsection 42 (b) of the ATIPP Act authorizes the IPC to investigate any complaint made by the public about the administration of the ATIPP Act by a public body.¹

The IPC has broad investigation powers under this subsection but does not have the ability to make findings of fact and law, i.e. adjudicative authority to decide how the law is to be interpreted and applied. In addition, there is no right of appeal under this subsection. The IPC does, however, publish all investigation reports and responses to recommendations on the Office's website.

Requests for Review

Section 48 of the ATIPP Act authorizes the IPC to conduct a review upon receiving a request for review from a person (or a third party in the case of the last bullet) for any of the following:

- a refusal by a public body to grant access to a record,
- a decision by the public body to separate or obliterate information from a record,
- a decision by the records manager to declare a request for access to a record abandoned,
- a decision by the records manager to not waive a part or all of a fee for processing an access request,
- a refusal by a public body to correct information or annotate a record,

¹A public body is the body under the ATIPP Act that is required to comply with the ATIPP Act for records in its custody and control.

- a complaint that the public body improperly collected, used or disclosed personal information, or
- a decision by a public body to release a third party's personal or business information.

The IPC has broad investigative powers under section 48 in conducting reviews and may conduct an inquiry as part of the review process. The IPC has adjudicative authority when conducting an inquiry to interpret the law and decide whether a public body has complied with the law. Upon completing an inquiry, the IPC may make certain recommendations to remedy non-compliance. After an inquiry is complete, the person who requested the review can, in certain circumstances², appeal a decision associated with a review to the Yukon Supreme Court.

Authority to Settle

The ATIPP Act authorizes the IPC to try and settle a complaint or request for review.³

II. PROCEDURES

The Office of the IPC has developed the following procedures to more effectively manage complaints and requests for review.

Informal Case Resolution

All written complaints received under subsections 42 (b) or 48 (1) of the ATIPP Act will initially be managed through informal case resolution (ICR) unless a decision is made to investigate or proceed directly to inquiry.

The procedure for managing a complaint or request for review through ICR follows.

1. **Contact** – An Investigator from the ICR Team contacts the pre-designated contact for the public body.
2. **ICR** - The Investigator and the contact (or designate) enter into discussions about the complaint or request for review in an attempt to reach a settlement.
3. **Settlement** - If settlement is reached, the Investigator sets out the terms in a memorandum of understanding (MOU) and provides it to the parties to confirm agreement.
 - a. **Follow-up** - The Investigator follows up as necessary to ensure settlement terms are met.
4. **Non-settlement of a Complaint** - If settlement does not occur, the Investigator forwards the file to the Director of Intake and Informal Case Resolution to decide if formal investigation is necessary.
5. **Non-settlement of a Request for Review** - If settlement does not occur, the Investigator will send a letter informing the parties of the outcome and inform them they can request the IPC conduct an inquiry. A request for inquiry does not guarantee an inquiry will occur; it is up to the IPC to decide whether to conduct an inquiry.

6. **Publication** – A case summary may be published for complaints or requests for review settled through ICR if it is determined there is educational value. Public bodies and complainants/applicants are not named in case summaries. Statistics about ICRs will be published in the Annual Report of the IPC and examples may be cited.

Our goal is to resolve all ICRs within 90 days of receipt of a complaint or request for review.

Investigation

a) Complaints

A written complaint received under subsection 42 (b) of the ATIPP Act may proceed directly to investigation if it is determined that a formal investigation of the complaint is necessary to properly address the complaint. Factors that may be considered in making this determination follow.

- **Serious or complex** - A complaint does not lend itself to informal case resolution due to the seriousness of the complaint or complexity, such as a systemic complaint involving multiple complainants.
- **Resolution unsuccessful** - The complaint could not be resolved through ICR in a timely manner or at all.
- **Education purposes** - There is a need to raise awareness through publication of an investigation report or case summary about the requirements of the ATIPP Act.

The procedure for managing an investigation of a complaint follows.

1. **Contact** – Opening correspondence is sent to the public body to notify them about the investigation and request a contact for the investigation.
2. **Investigation** – An Investigator from the Investigation and Compliance Review Team gathers relevant evidence, analyzes the evidence, and draws conclusions about non-compliance with the ATIPP Act.
3. **Report** – A preliminary investigation report is prepared.
 - a. **Consultation** - The public body is provided with the preliminary investigation report to verify facts, consider the recommendations, and provide any comments in relation to the preliminary report for consideration by the IPC.
 - b. **Finalization** – After reviewing the response received from the public body, the IPC finalizes the report and recommendations and sends the report to the public body. The IPC requests the public body provide its decision by a specified date about whether it will accept the recommendations.
4. **Recommendations Acceptance** – If the public body accepts the recommendations, the IPC follows up to ensure the public body has given effect to the recommendations.
5. **Recommendations Non-Acceptance** - The decision by the public body to accept the recommendations or not is published on the IPC's website.

6. **Complainant informed** – A final investigation report is sent to the Parties along with the public body’s decision in respect of the recommendations.
7. **Publication** – Investigation reports are published on the IPC’s website along with the decision by the public body to accept any recommendations made. A summary may also appear in the IPC’s Annual Report. Statistics associated with recommendations made in investigation reports will be published in the IPC’s Annual Report.

Our goal is to complete a complaint investigation within 12 months.

Inquiry

Under the ATIPP Act, the IPC has discretion about whether to conduct an inquiry. A matter under review may proceed to inquiry in the following circumstances.

- **Resolution unsuccessful** - A request for review cannot be resolved through ICR and the IPC decides an inquiry is necessary in order to address the matter under review.
- **Precedent required** - The IPC decides upon receiving the request for review that it will proceed directly to inquiry because there is a need to clarify the interpretation of a provision of the ATIPP Act at issue in the matter under review or for any other reason.

The procedure for managing an inquiry follows.

1. **Decision to conduct an inquiry** - The IPC exercises her discretion to conduct an inquiry.
 - a. **Decision not to conduct an inquiry** – Upon receipt of a request for inquiry, the IPC may decide not to conduct an inquiry. There are a number of factors the IPC will consider in making this decision. If the IPC decides not to conduct an inquiry the parties will be notified of the decision and reasons for the decision.
2. **Contact** - The registrar prepares a notice of inquiry to the parties and sends it along with instructions for submissions. The registrar works with the parties to finalize and circulate the submissions and any replies.
3. **Evidence to IPC** - Once the submissions and replies are received, the registrar provides all evidence relevant to the inquiry to the IPC.
4. **Inquiry** - The IPC analyses the evidence and relevant law and makes findings of fact and law arising in the course of the inquiry.
5. **Report** – The IPC prepares a report containing findings, any recommendations to remedy a finding of non-compliance with the ATIPP Act, and reasons for the findings and recommendations. In the report, the IPC also advises the public body of its requirement to give written notice of its decision about whether it will follow the recommendations and inform the parties of their right to appeal.
6. **Parties informed** – The registrar distributes the report to the parties involved in the inquiry.

7. **Follow-up** – If recommendations are included in the report, the IPC receives the public body’s decision about whether it will follow the recommendations within the time period required. If the public body does not respond in time, the IPC will notify the parties that the public body is deemed to have refused to follow the recommendations.
8. **Publication** - The IPC publishes the inquiry report on the IPC’s website and identifies whether the public body accepted the recommendations. Statistics will be published.

An inquiry is an adjudicative process and, therefore, completion of a report may take a significant amount of time.

This document was prepared to assist the public and public bodies, subject to the *Access to Information and Protection of Privacy Act* (ATIPP Act), understand how the Office of the Information and Privacy Commissioner manages complaints and requests for review. This document is for administrative purposes only and is not intended, nor is it a substitute for legal advice. For the exact wording and interpretation of the ATIPP Act, please read the Act in its entirety. This document is not binding on the Information and Privacy Commissioner.