YUKON LEGISLATIVE ASSEMBLY
Office of the Ombudsman

2005 Annual Report

Office of the Ombudsman and Information & Privacy Commissioner

January 1 to December 31, 2005

Ombudsman & Information and Privacy Commissioner

10 years — promoting fairness, openness and accountability.

Office of the Ombudsman and Information & Privacy Commissioner

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Photos in this report are of the Robert Lowe Bridge and Miles Canyon

Robert Lowe came to the Yukon in 1899 and had mining interests in the Whitehorse Copper belt and a successful cartage business. Robert Lowe became a long serving local and territorial politician. The suspension bridge, named in his honour, was built in 1922 and dedicated by Governor General Lord Byng. The footbridge spans Miles Canyon near Whitehorse.

Originally referred to as Grand Canyon, U.S. Lieutenant Fredrick Schwatka (1849–1892) renamed it in July of 1883 Miles Canyon after General Nelson Miles. Schwatka wrote, "Through this narrow chute of corrugated rock the wild waters of the great river rush in a perfect mass of milk-like foam, with a reverberation that is audible for a considerable distance." Although accounts differ as to the ferocity of the rapids, there is no question that they were very dangerous. During the Gold Rush, hundreds of boats loaded with precious supplies were lost (as well as several lives) before the Northwest Mounted Police arrived to regulate traffic.

Eventually a wooden rail system around the canyon eliminated the need to battle this hazard. The hydroelectric dam constructed to provide power to Whitehorse has tamed Miles Canyon, but drifting through its 50-foot high basaltic walls is still a thrill.

(from: www.yukoninfo.com)

Ombudsman

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Office of the Ombudsman

May 2006

The Honourable Ted Staffen
Speaker of the Legislative Assembly
P.O. Box 2703
Whitehorse, Yukon
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Mr. Speaker:

I have the pleasure of presenting to you, and through you to the Legislative Assembly, the Annual Report of the Yukon Ombudsman and Information & Privacy Commissioner.

This report is submitted pursuant to Section 31(1), *Ombudsman Act* and Section 47(1), *Access to Information and Protection of Privacy Act*. The report covers the activities of the Office of the Ombudsman and the Information & Privacy Commissioner for the period January 1, 2005 to December 31, 2005.

Yours truly,

H Moorlag.

Hank Moorlag
Ombudsman

Ombudsman &
Information and Privacy
Commissioner

10 years — promoting fairness, openness and accountability.

Introduction of the Office Logo

In this Annual Report, we are introducing a new office logo in recognition of the year 2006 being the 10th anniversary of the introduction of the *Ombudsman Act* and the *Access to Information and Protection of Privacy Act* and the creation of our office.

The logo design incorporates the two functions of the office. The outer circle represents the Ombudsman, while the inner images in the form of a keyhole represent access to information and protection of privacy. These three images can also be seen as the three entities that are typically engaged in the work of the office: the public, the Yukon Government and the Ombudsman/ Information & Privacy Commissioner.

Our new logo will appear on all future material from our office. In the year 2006, our letters will include the following notation:

"10 years – promoting fairness, openness, and accountability".

Mission Statement

To provide an independent, impartial means by which public complaints concerning the Government of Yukon can be heard and investigated under the *Ombudsman Act*.

To provide an effective avenue for receiving and processing public complaints and requests for the review of decisions by public bodies related to the *Access to Information and Protection of Privacy Act*.

To promote fairness, openness and accountability in public administration.

The Function of the Ombudsman

The function of the Ombudsman is to ensure fairness and accountability in public administration in the Yukon.

The Ombudsman fulfills this function by receiving complaints, conducting an impartial and confidential investigation and, when warranted, recommending a fair and appropriate remedy.

The Ombudsman is not government but investigates government. The Ombudsman can recommend that an authority resolve administrative unfairness, but cannot order it to change its actions or decisions. The Ombudsman receives complaints from individuals and groups but is not their advocate.

The *Ombudsman Act* provides the statutory framework under which the Ombudsman carries out his function.

The Yukon Ombudsman has jurisdiction to investigate complaints about the actions, decisions, recommendations or actions of the following:

- Departments of the Yukon Government.
- Crown corporations and independent authorities or boards.
- Public schools and Yukon College.
- Hospitals, local and regional health bodies, and governing bodies of professional organizations.
- Municipalities and Yukon First Nations governments if requested by a municipality or First Nation.

The Ombudsman does not have the authority to investigate the following:

- Complaints about actions which occurred prior to July 1996 when the *Ombudsman Act* became law.
- Complaints about the courts, the Yukon Legislature, the Yukon Elections Office, or lawyers acting on behalf of the Yukon Government.
- Disputes between individuals.
- Complaints against the federal government.
- Complaints for which there is a statutory right of appeal or review.

The Ombudsman's office is an office of last resort. This means the Ombudsman encourages any complainant to raise his or her complaint with the authority first and then to come to the office if that route is unsuccessful.

Ombudsman's Message

In preparing this summary of our year's work, I analyzed the files we handled to see whether common issues or themes might emerge. Interestingly, in many of the complaint files I found the same top three issues as reported last year: inadequate communication, unreasonable delay, and questions about whether legislation, policies or standard administrative procedures were followed.

Inadequate communication was evident in several cases. In one there was a lack of clarity in the criteria for a contract proposal, resulting in proponents giving different information on which their suitability would be assessed. In another case a person sent a job application by e-mail and later learned the application was not considered because the department had no record of its receipt. Another individual's reimbursement of survey costs was accompanied by a letter that did not explain how the reimbursement was calculated. A recurring complaint is that people affected by decisions of a government department are not being given adequate and appropriate reasons for the decision.

Complaints of unreasonable delay included one where there was no response to a request for assistance with home schooling. In this and other cases, the complainants feel a strong sense of frustration because they hear nothing. When our office intervenes, there is normally a response. However, our investigation does not end without exploring the reasons for the delay and determining if gaps in administrative processes or service delivery should be addressed.

Several complaints were investigated where it was alleged department officials did not follow legislation, policy or standard practices. In one case, investigation revealed Whitehorse Correctional Centre (WCC) did not properly apply its policy criteria for considering a request for a temporary absence. In another case, also involving the Correctional Centre, the investigation identified a conflict between a practice and the legislation. In that case, it was determined the *Corrections Act* provision was badly out of date, and out of step, with current corrections principles and policies. This conflict can only be resolved through a legislative amendment.

Another investigation into a complaint of arbitrary conduct involved the intervention of a community nurse who had health concerns regarding a patient's ability to safely operate a motor vehicle and reported the concern to the Motor Vehicles Branch. The complainant's license was suspended. In that case, the actions of the nurse were considered to be justified and did not contravene ethical standards or policy guidelines.

As can be seen, not all investigations result in complaints being substantiated. However, there are sufficient grounds, in my view, to repeat the comments in my previous annual reports that government can do more to reduce the number of complaints coming to the Office of the Ombudsman. These include:

- Developing, within departments, a complaint handling process that is oriented to improving program delivery and public administration;

- Training public servants to deal with conflict in productive ways and to offer training programs based on an identification of the program area priorities;

A recurring complaint is that people affected by decisions of a government department are not being given adequate and appropriate reasons for the decision.

- Introducing Corporate Value Statements that can be adopted by public servants as an alternative to defensive and dismissive personal responses to criticism;

- Emphasizing and reinforcing the use of personal and specific written communication with the public in plain language.

Our statistical reporting has changed this year to more accurately reflect the complaints handled rather than the number of files opened. There are times when a file involves the investigation of more than one complaint. In such cases, the complaints may have different outcomes. For example, one may be settled when the authority is notified of the concern. Another may be settled during or after investigation. Or, investigation may determine a complaint is not substantiated. Treating these complaints separately improves statistical reporting, and brings our office in line with reporting practices of other Canadian ombudsman offices.

Ombudsman Issues

Concerns about public health

Sometimes individuals do not know which legislation applies to their particular concern. Such was the case with the person who questioned whether a health standard was being followed under legislation for which Renewable Resources was responsible. The matter was referred by Renewable Resources to Health and Social Services under another piece of legislation. After allowing a reasonable period of time for a response and receiving none, the complainant came to our office about the way both departments handled the problem.

After investigation, we found that Renewable Resources had correctly referred the concern to Health and Social Services, since the matter related to public health. Considerable dialogue took place between the authority, outside agencies and our office.

Ultimately, the complaint was settled because the authority took adequate steps to improve its ability to safeguard the public's health and adopt a formal complaint handling process.

Sometimes a complainant is not informed by an authority of the results, even though an authority has taken action to remedy specific concerns or systemic issues raised. In this instance, the authority provided a comprehensive report to the complainant after we pointed out that it had not given adequate and appropriate reasons for decisions made in relation to the matter brought forward by the complainant.

Legislation versus policy

Policies used by an authority may provide a fairer way of resolving certain issues than adhering strictly to the legislation.

Even though policies and procedures used by an authority may sometimes be inconsistent with the legislation which governs that authority, they may provide a fairer way of resolving certain issues than adhering strictly to the legislation.

An inmate at WCC complained that requests for a special diet for health reasons were ignored or not taken seriously. During investigation, we found that WCC policy regarding special dietary needs for inmates was inconsistent with the *Corrections Act* and Regulations. The legislation requires the Medical Officer, defined as a licensed physician, to report any inmate's special dietary needs to the Superintendent. Current WCC policy, however, allows the nurse to prescribe special diets. An amendment to legislation would be required to bring the process for inmate diet alterations into alignment with current WCC practices.

Our concern in this case was the deviation of practice from legislation. The rule of law should never be ignored, making it imperative that deviations be identified and appropriate recommendations be made to correct the situation.

The *Corrections Act* is a very old piece of legislation, out of step with current thinking. The potential for conflict between the legislation and policies is great, because the approach to corrections, the resources available, efficiencies and so on have changed over time, while the legislation has not.

In this instance, a unique situation existed in which strict compliance with the terms of the *Corrections Act* and Regulations would not result in "fairness". Rather, the policy and practice which WCC followed served the intent of the legislation and the interests of the inmates more effectively and efficiently than the legislation itself.

Complaints often include concerns about an authority either not applying existing policy, or not applying it consistently.

To correct the disparity between legislation and policy, WCC identified the necessary changes to the legislation and provided that information to the co-chairs of the Corrections Consultation Project Team. This will ultimately lead to legislative changes which will harmonize the legislation and the policy.

Applying policy consistently

An important demonstration of administrative fairness is the consistent application of policy by government departments and agencies. Complaints to our office often include concerns about an authority either not applying existing policy, or not applying it consistently.

A medium security inmate at the Whitehorse Correctional Centre asked for an unescorted temporary absence (TA). The request was refused. The inmate was told the policy relating to temporary absences only applies to those with a minimum security rating.

According to the institution's policy, the inmate must complete a specific application form to request a TA and certain criteria must be applied in deciding whether to grant a TA. To be eligible to apply, an inmate must have served one quarter of the total sentence. The decision about whether to grant the TA is then based on an assessment of the inmate's behavior, participation in programs, risk to reoffend and risk to the community. Security rating is not one of the criteria.

In our discussions with WCC, it became clear the inmate's request had not been dealt with according to the policy in place. The complainant had not been provided with an application form or any of the information about the criteria for assessing a request. The refusal was based only on the security rating and the required assessment was not done.

We confirmed that the inmate was eligible to apply for a TA, having served at least one quarter of the sentence. We asked WCC to permit the inmate to make application for a TA and apply the assessment criteria set out in the policy to arrive at a decision. WCC agreed and the complaint was settled.

Clarity in government contracting

A person identified a number of concerns related to the tender process for the maintenance and emergency repair contract for housing stock owned by Yukon Housing Corporation. The complainant's primary concern was that the contract was awarded to an individual who did not have the formal qualifications apparently required by the terms of the tender.

In discussions with our office, the authority acknowledged the documents could mislead a bidder as to the actual criteria used for evaluating the tender. Although the intent of the contracting authority was to evaluate bidders primarily on their actual experience as it related to the scope of work identified in the contract, the intention was not made clear to bidders. The authority agreed a bidder who was able to infer that the evaluation would be conducted in this manner would have a distinct disadvantage over someone who took instructions at face value. In addition, the authority agreed the ranking method used to evaluate the information provided, injected a very subjective element into the process.

The contracting authority agreed the tender documents did not meet the requirements under the Contract Directives to fully and clearly describe the evaluation criteria in requests for bids.

The contracting authority subsequently amended its tender documents to clarify the nature of the information a bidder is required to provide, identify the evaluation criteria to be used, and clearly state the method for assessing the information provided against the criteria.

Findings and recommendations

When an investigation provides grounds for believing that an authority has acted unfairly, the Ombudsman may make a formal finding of unfairness and recommend steps the authority should take to correct the unfairness.

However, before such findings or recommendations can be made, section 17 of the *Ombudsman Act* requires that notice be given of the grounds for the potential adverse findings and an opportunity for the authority to be heard before making a final recommendation. Giving notice can lead to productive discussions with the authority about the findings and the proposed recommendation.

17. Where it appears to the Ombudsman that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect an authority or person, the Ombudsman shall inform the authority or person of the grounds and shall give the authority or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsman, before he or she decides the matter.

In one instance, a person felt unfairly treated in the course of a job competition for an auxiliary position. At the conclusion of the application and interview process, the complainant was offered a position. It was accepted and a start date was set for work. The offer of employment was subsequently rescinded.

Our investigation confirmed that the persons who extended the offer were authorized to direct hire auxiliary employees. It also confirmed that the complainant met the requirements of the screening and interview process. The references provided were checked prior to the offer being made and were considered satisfactory.

The Ombudsman may make a formal finding of unfairness and recommend steps the authority should take to correct the unfairness.

However a Senior Human Resources Officer preparing the necessary hire paperwork expressed a concern that the references were from persons who had not directly supervised the complainant in past positions. The complainant was asked to provide additional "supervisory" references. This was impossible, as the complainant had been out of the work force for a number of years and direct supervisors of previous jobs were no longer living in the Yukon. While unable to provide references from direct supervisors, the complainant did provide additional names of co-workers in those jobs. The Department rescinded the offer of employment on the basis that the references were not from persons who had directly supervised the complainant in past employment.

From these facts, the investigation concluded that the decision to rescind the offer of employment was unfair. The complainant had met all the requirements of the competition. The Department was unreasonable in making an additional demand, impossible to meet, after offering the complainant the position.

When we gave notice to the Department of the potential adverse findings, the department agreed to extend an offer of employment in a similar position to the complainant. In addition the Department agreed to consult with the Public Service Commission to develop appropriate guidelines for assessing references provided by candidates who have been out of the workplace for an extended period of time.

The complainant was satisfied with this outcome.

When an investigation leads us to conclude the authority has acted within standards of fairness, we make a finding that the complaint is not substantiated.

Complaint not substantiated

At the conclusion of an investigation, we are required to report to the authority and the complainant. When an investigation leads us to conclude the authority has acted within standards of fairness, we make a finding that the complaint is not substantiated. We then write to both the authority and the complainant, outlining the reasons for this conclusion. The letter usually describes the steps taken to investigate the complaint, what evidence was considered and any legislation or case law that applies. We then explain how the evidence led to our conclusion that the authority acted properly.

22. Where the Ombudsman decides not to investigate or further investigate a complaint, or where at the conclusion of an investigation the Ombudsman decides that the complaint has not been substantiated, he or she shall as soon as is reasonable notify in writing the complainant and the authority of that decision and the reasons for it and may indicate any other recourse that may be available to the complainant.

An inmate from WCC complained about being denied medical services related to an attempt to stop smoking. As part of a move from a smoking to a non-smoking facility, WCC introduced a federally funded 6-week smoking cessation program providing nicotine patches to inmates interested in quitting.

The complainant expressed an interest and was provided with a patch. Because some inmates misused the patch, its use was subsequently discontinued for safety and security reasons. Other cessation aids such as candies and herbal teas were made available to inmates as well as medication, if prescribed by the facility physician.

Our investigation confirmed that the complainant was provided with herbal teas, candies and similar items as aids to smoking cessation. The complainant also met with the physician eight times in a three-month period, during which no concern or request related to smoking cessation was ever raised. We were unable to substantiate this complaint, as we found no evidence to indicate the complainant was being denied medical services. This finding was reported to both the authority and the complainant.

Failure to communicate

A failure to communicate properly is frequently the source of problems. A clear example was the case of a person who felt unfairly treated in relation to the amount reimbursed for a legal survey of property purchased under an Agreement for Sale of Land.

The complainant had entered into such an agreement in 2000. One of the terms required the land to be surveyed within one year of paying the full purchase price. In 2004 the property was surveyed at a cost of $4000. The complainant submitted an invoice for the survey costs and received a refund of $1000. There was no cover letter with the cheque and the notation on the cheque itself simply indicated, "Refund — Survey Cost". At the same time, the complainant learned a neighbour had been reimbursed the full amount of a survey cost. This gave rise to the concern of unfair treatment.

Our investigation revealed that in 2003 the Yukon Government assumed responsibility for administering lands in the Yukon through the Devolution Transfer Agreement with the Government of Canada. In the result, it assumed responsibility for all pre-existing Agreements for Sale including that of the complainant. Under the Agreements for Sale with the Government of Canada, the estimated survey costs were subtracted from the fair market value of the land to arrive at a purchase price of the land. In this instance, the records showed that $3000, the estimated cost of the survey, was subtracted from the fair market value of the land. The amount refunded was the difference between the estimated cost and the actual costs of the survey.

After devolution, survey costs were treated differently. Under Agreements for Sale entered into with the Yukon Government after devolution, the purchase price of land was based on its fair market value. Survey costs were not deducted from the purchase price. Rather it was reimbursed as a land development cost. This explained why the neighbour was reimbursed the full amount of the survey costs.

Our office was satisfied the complainant was reimbursed the correct amount in relation to survey costs. However, it was apparent that the manner in which the Department of Energy, Mines and Resources, Lands Branch communicated information about survey costs might confuse applicants. Public information explaining how survey costs are dealt applied to new applicants for land, and did not deal with those situations where the Agreement for Sale was with the Government of Canada, where a different approach to land valuation was taken. Although the Department developed clear written guidelines for employees about dealing with survey costs where the Agreement for Sale was with the Government of Canada, these guidelines were not available to the general public.

Following initial consultation, the department included information about the treatment of survey costs for those agreements entered into before the date of devolution in the material available to the public. In addition the Department provided the complainant with a written explanation of the process in that particular Agreement.

A failure to communicate properly is frequently the source of problems.

Reasonable time frames should apply to the actions and decisions of public authorities.

Unreasonable Delay

There are generally accepted rules and standards of fairness that guide the course of public administration. Among them is the principle that reasonable time frames should apply to the actions and decisions of public authorities.

Under section 23 of the *Ombudsman Act*, if the Ombudsman believes there was unreasonable delay in dealing with the subject matter of a complaint, he may recommend that the delay be rectified and a practice, procedure or course of action be altered to prevent a recurrence.

The following cases give examples of unreasonable delay complaints received by our office over the past year, and a description of how they were handled.

A person complained there had been unreasonable delay by the Department of Education in responding to a request for assistance related to home schooling for a child. The complainant was initially told to expect a decision in early April. In May, concerned that the school year would be ending soon and still without a decision from the Department, the complainant contacted our office.

Shortly after we contacted the Department and outlined the concern, the Superintendent wrote to the complainant apologizing for the delay and providing his decision. The delay was corrected and the matter was settled.

23.(1) Where, after completing an investigation, the Ombudsman believes that

(c) there was unreasonable delay in dealing with the subject matter of the investigation,

the Ombudsman shall report his or her opinion and the reasons for it to the authority and may make the recommendation he or she considers appropriate.

In another case the complainant, on behalf of a company, had met with and written several letters to the Department of Energy, Mines & Resources about its actions involving the removal of company vehicles from land under agreement for sale. The Department of Justice, Legal Services, wrote to the company about the potential liability for environmental damage as the result of spilled fluids from the vehicles. However, when the company sought clarification about who would bear responsibility, no response was received.

The complaint of unreasonable delay was made to our office. We determined that the delay was the result of changes in staff within the Department. When the complainant received a response, the matter was considered settled.

An injured worker complained about unreasonable delay on the part of the Yukon Workers Compensation Health and Safety Board (YWCH&SB) in setting a hearing date.

Our investigation revealed that four months after the worker had filed a written Notice of Claim Review, a date for the hearing had still not been set. The main reason for the delay was disagreement about how, when and what disclosure of information to the employer should be made.

A new protocol for hearings made it necessary for all issues related to disclosure to be settled before setting a hearing date. This practice was introduced to ensure administrative fairness requirements for disclosure were met and to make more efficient use of the Hearing Officer's scheduled hearing time.

However, in this instance, there appeared to be no avenue to resolve the disagreement about disclosure. The Hearing Officer had no authority outside a hearing to deal with matters related to disclosure. The Claims Adjudicator is responsible for identifying the documents for disclosure. But, since the claims adjudicator disagreed with disclosing claim file records the worker identified as relevant to the review, the parties were at an impasse.

The worker complained to our office because there appeared to be no mechanism short of an application to court to resolve the disclosure issues and set a hearing date.

We contacted the authority and outlined the worker's concern. Within a short period of time the authority set a date for the hearing. YWCH&SB also established new practice guidelines for dealing with disclosure, including timelines, a process for clarifying and resolving disputes about disclosures, and setting hearing dates that respects a worker's right to a timely hearing.

The Ombudsman considered this matter settled.

Electronic job applications

A complainant submitted an e-mail application to the Department of Education for a teaching position in a rural school. Computer records showed that the e-mail application was sent and received on the same date. The Department did not send an acknowledgement of receipt, but the complainant was not concerned, because based on past experience, one was not always provided. After the competition closed, the complainant contacted the Department to inquire about the status of the application. The complainant had not been considered for the position because the Department said it had no record of receipt of the e-mail application.

Unfortunately, at that time there was no possibility of determining whether or not the e-mail application was ever received. The procedures used for receiving, handling and deleting e-mail applications made it impossible to confirm.

While we agreed with the Department that an applicant has some responsibility for confirming receipt of an application, certain controls can be put in place to assist an applicant and minimize the chances an application could be lost due to human error or delayed by limitations of transmission technology.

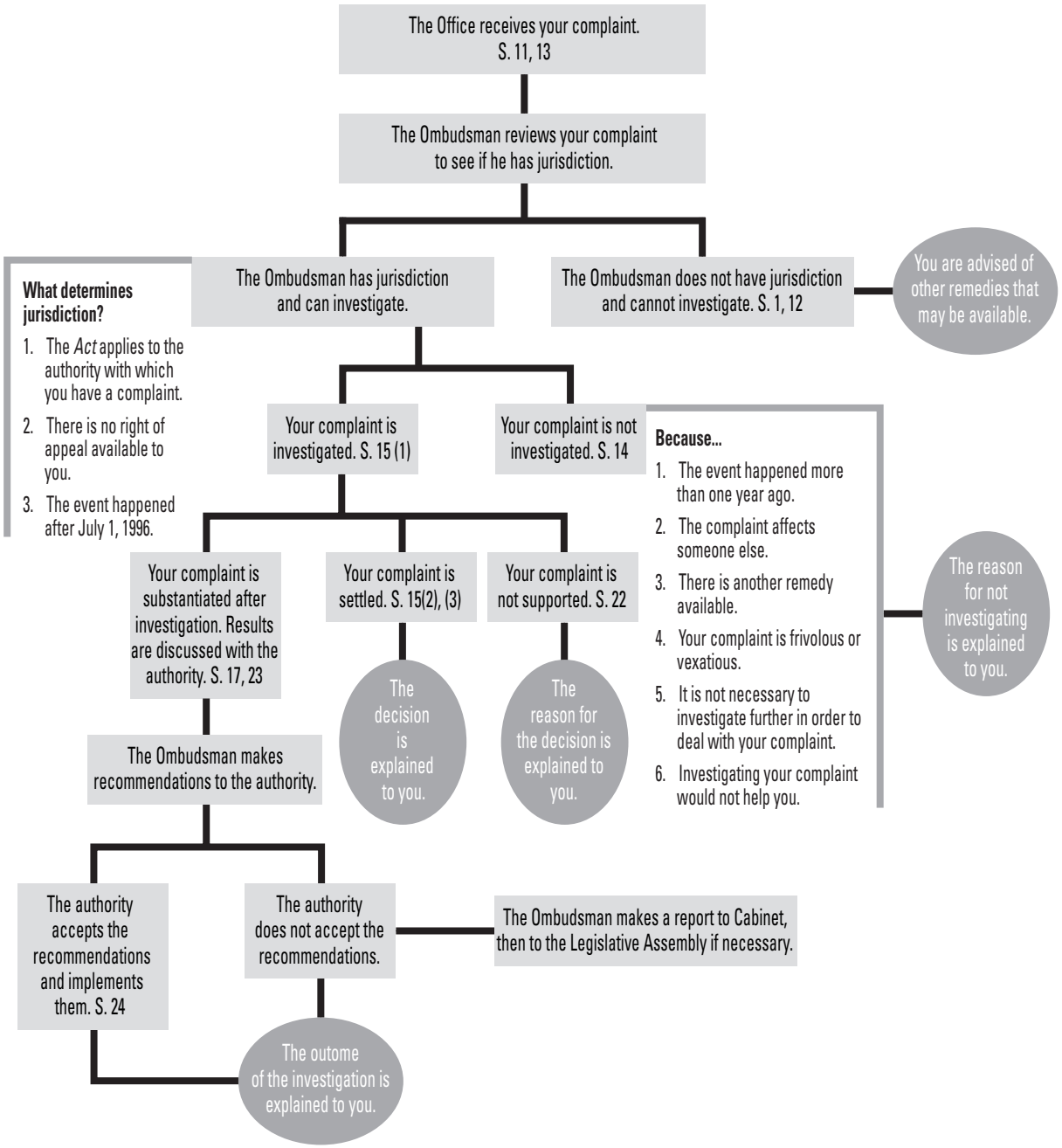
The Department confirmed that the majority of applicants for teaching positions submit application by e-mail. In fact, they are encouraged to do so by the Department of Education, which provides an e-mail destination address for applications.

The Department was interested in examining the process to avoid a repetition of the circumstances that gave rise to this complaint. After consultations with this office, the Department undertook a review of its process for receiving and processing employment applications received by e-mail. It instituted a number of changes to the way receipt of applications is acknowledged and processed within the department. In addition, the Department indicated that the Public Service Commission (PSC) was conducting a review of recruitment procedures. It was the intention to bring the issue of job applications received by e-mail to the review process to ensure it is addressed across departments.

This response addressed the procedural issues for the future and we considered the matter settled. However, it did not (and could not) change the situation for the complainant.

The Department undertook a review of its process and instituted a number of changes.

Ombudsman Flow Chart of Complaints



Statistical Summaries

JURISDICTIONAL COMPLAINTS HANDLED*	
Brought forward from 2004	**29
investigations	27
not yet analyzed	2
Received in 2005	53
TOTAL	**82**
Completed in 2005	50
Carried over to 2006	32
investigations	29
not yet analyzed	2

* See page 6 for an explanation of the statistical numbers.
** This number is different from the 2004 Annual Report because it indicates the number of complaints, rather than the number of files, being investigated.

RESOLUTION OF JURISDICTIONAL COMPLAINTS RECEIVED	
Opened as investigation	29
Referred to another remedy	6
Further investigation not necessary	5
Insufficient information provided	2
No benefit to complainant in investigating	1
Complaint withdrawn	7
Legislated appeal exists	2
Not yet analyzed	3
TOTAL	***55**

* This total includes 2 complaints not yet analyzed and brought forward from 2004.

COMPLAINTS INVESTIGATED	
Brought forward from 2004	29
Opened in 2005	29
TOTAL	**58**
Completed in 2005	29
Carried over to 2006	29

OUTCOME OF COMPLAINT INVESTIGATIONS COMPLETED IN 2005	
Complaint substantiated	14
Resolved when authority informed of complaint	—
Settled under s.15/17 during or after investigation	14
Report/recommendations to authority under s.23	—
Complaint not substantiated	6
Complaint discontinued	9
TOTAL	**29**

NON-JURISDICTIONAL COMPLAINTS	
Businesses	10
Courts	2
Federal	1
First Nations	2
Municipalities	1
Other	5
RCMP	2
Other Provinces	1
TOTAL	**24**

These requests often require time to research before being referred to other agencies for assistance.

COMPLAINTS RECEIVED IN 2005 — BY AUTHORITY

AUTHORITY	OPENED AS INVESTIGATION	NOT OPENED AS INVESTIGATION	NOT ANALYZED	TOTAL
Community Services	2	2	—	4
Economic Development	1	—	—	1
Education	3	1	—	4
Education Appeal Tribunal	1	—	—	1
Energy, Mines and Resources	5	—	—	5
Health and Social Services	5	3	—	8
Justice	1	3	—	4
Public Service Commission	—	1	—	1
Whitehorse Correctional Centre	8	9	3	20
Yukon Hospital Corporation	1	—	—	1
Yukon Workers' Compensation Health & Safety Board	2	2	—	4
TOTAL	**29**	**21**	**3**	**53**

OMBUDSMAN REQUESTS FOR INFORMATION

TOTAL	**106**

Requests for information often require time to research.

The Function of the Information and Privacy Commissioner

The primary purpose of the *Access to Information and Protection of Privacy Act* (the *Act*) is to make departments and agencies of government (public bodies) more accountable to the public and to protect personal privacy. The *Act* does so in a number of ways:

- By giving the public a right of access to records.
- By giving individuals a right of access to, and a right to request correction of, personal information about themselves.
- By specifying limited exceptions to the rights of access.
- By preventing the unauthorized collection, use and disclosure of personal information.
- By providing for an independent review of decisions made under the *Act*.

The office of the Information and Privacy Commissioner carries out these independent reviews. However, the right to a formal review by the Commissioner is limited to the following decisions made under the *Act*:

- A refusal to grant access to a requested record.
- A decision to separate or obliterate information from a requested record.
- A decision about an extension of time for responding to a request for access to a record.
- A decision to deny a request for a waiver of a fee imposed under the *Act*.

There is also a right of review if a person believes his or her personal information was collected, used or disclosed by a public body in a way that was contrary to the requirements of the *Act*.

A supplementary provision of the *Act* gives the Commissioner responsibility for monitoring how the *Act* is administered to ensure its purposes are achieved. The Commissioner may, among other things, receive complaints or comments from the public concerning the administration of the *Act*, conduct investigations into those complaints, and make reports. The Commissioner may also comment on the implications for access to information or for privacy protection of existing or proposed legislative schemes or programs of public bodies.

"Administration of the *Act*" refers to anything done by the Records Manager, a public body, or the Information and Privacy Commissioner, to meet the requirements of the *Act*.

Commissioner's Message

In May, 2005, the Minister responsible for the *Access to Information and Protection of Privacy Act* referred to the *Act* as being like Swiss cheese — full of holes. My office continues to be challenged by this fact.

In this report, I highlight a number of cases and situations that underline the pressing need for a review of the *ATIPP Act* and amendments to rectify some serious shortcomings. This year's problems are not new. In my annual report for 2004, I detailed the need for a review and provided a specific list of amendments to be considered. The examples in this report simply continue to emphasize the need.

Last year I expressed a concern that the limited scope of the *ATIPP Act* makes it difficult for government departments to participate in programs with their partner agencies when those programs involve the handling of personal information. This is because there is no comprehensive regulatory framework within which programs can operate so that privacy principles can be enforced.

The limited scope of the *ATIPP Act* makes it difficult for government departments to participate in programs involving the handling of personal information.

Why is this becoming an important issue now? There has been a move by Canada Health InfoWay for several years to support initiatives in the provinces and territories leading to the creation of electronic health records. The ability of health practitioners to share patient information for timely consultation and collaboration is viewed by the health sector as enormously beneficial in providing improved health care to Canadians.

The health sector has agreed that an essential element in the success of such an endeavour is to protect the personal privacy of patients. This can only be accomplished through a comprehensive legislative framework to bind all custodians of personal health information to strong privacy principles.

Such a framework does not exist in the Yukon Territory. This became very evident when I was asked to review a privacy impact assessment on a collaborative program for managing the care of patients with chronic diseases. This very worthwhile program would use a central database for registered patients so doctors, pharmacists, dieticians, physiotherapists and other health care providers could have instant access to important medical information about the patients. My comments on this privacy impact assessment can be found on page 20.

This annual report gives examples of three other problems with the *ATIPP Act*. The first involves the dilemma faced by public bodies when responding to certain requests for access to information. Often the time required to deal with estimates of cost, or a request for a waiver of fees, takes up some or all of the 30 days by which a public body must respond to the applicant's request. My investigation into this aspect of the administration of the *Act* is found on page 23.

The second example has to do with the restricted situations in which I may review the decisions of public bodies under the *Act*. The *Act* gives an applicant the right to ask for a review of a decision by a public body to refuse access to a record, or to separate or obliterate certain information within a responsive record. There is no review right when a public body's response is that no records were found. On page 24 of this report a case is described where we dealt with the matter as an investigation into the administration of the *Act*. Records not found in the initial search were found when we began our investigation.

The third example relates to a gap in the legislation that I determined to be an error in legislative drafting. The case is reported on page 25.

Last year I expressed a concern that some eight years after the *ATIPP Act* came into force there are still indicators the purpose and intent of the legislation has not made its way into the day to day operations of departments. Public concerns were expressed this past year about the personal information of heating fuel customers being given to the department of Finance by vendors and distributors as a mandatory monthly reporting requirement. My investigation into this tax compliance program, reported on page 21, revealed, once again, that a strict legal interpretation of the law enforcement provisions of the *Fuel Oil Tax Act*, and the *ATIPP Act*, forms the basis for public policy decisions rather than the principles of the *ATIPP Act*.

Lest my comments be interpreted as being totally negative, I am pleased to report on the very positive results of the joint efforts of my office and the Records Manager's office in putting together a training workshop for departmental ATIPP Coordinators. Our special guest and keynote speaker was David Loukidelis, BC's Information and Privacy Commissioner. My comments on this very worthwhile workshop can be found on page 29. Plans are under way to hold another workshop with a focus on privacy impact assessments.

I am pleased to report on the very positive results of the training workshop for departmental ATIPP Coordinators.

Review and Comment on Programs and Legislation

42. In addition to the commissioner's powers and duties under Part 5 with respect to reviews, the commissioner is responsible for monitoring how this Act is administered to ensure that its purposes are achieved …

CDM Collaborative Program

The Department of Health and Social Services submitted a Privacy Impact Assessment (PIA) on a program intended to better manage the health care of patients with chronic diseases, such as diabetes. The Chronic Disease Management (CDM) Collaborative Program would permit physicians, pharmacists, physiotherapists, dieticians and other health care providers to access a registered patient's health information in a central database. Access to the database would be authorized by the 'most responsible provider', usually the patient's doctor.

The program uses software built for, and hosted by, the BC Ministry of Health Services. This 'CDM Toolkit' provides management support for participating teams of practitioners.

There is no comprehensive regulatory framework to enforce privacy principles.

As with any program that involves handling personal information, a privacy impact assessment should examine what data elements are involved; how the information flows; what the privacy risks might me; and how they can be managed or mitigated. For programs of Yukon public bodies, the *ATIPP Act* sets out the privacy principles that must be taken into consideration.

For me to review and comment on this PIA, some unique jurisdictional issues arise because my role is limited to commenting on the collection, use and disclosure of information covered by the *ATIPP Act* — information in the custody or control of Yukon government public bodies. Much of the information to be entered into this database is not covered by the *ATIPP Act* because it is contributed by private physicians, pharmacists, other health practitioners and the hospital.

Presently, the definition of a 'public body' under the *ATIPP Act* is limited to Yukon Government departments. Therefore, the only information covered by the *Act* would seem to be what is contributed to the program by community health centres and other health care facilities of the Yukon Government. The fact that the program uses a database in British Columbia, introduces the question of whether any of the information is actually in the custody or under the control of a Yukon public body, once it has been entered in the database.

I was therefore only able to make very general comments on this PIA. Although the PIA expressed an intent for the program to operate under the privacy principles set out in the *ATIPP Act,* the fact remains there is no comprehensive regulatory framework to enforce these principles. My recommendation to the Deputy Minister of Health and Social Services is to (a) ensure the department itself is meeting its specific obligations under the *ATIPP Act* in respect of information that falls under the *Act*, and (b) to take a leadership role in developing inter-agency protocols or agreements between the partners to ensure the program respects the same level of privacy protection as required by the *ATIPP Act*.

Reporting on heating fuel sales

Concerns were raised in the legislature, in the media, and in comments to the Commissioner about the Department of Finance requiring all heating fuel distributors to provide details in monthly reports on sales, including date of sale, name of purchaser, location of delivery and quantity sold. The concern was whether the collection of all this personal information by Finance about the customers of vendors was warranted for purposes of regulatory control under the *Fuel Oil Tax Act*.

Under section 42 of the *ATIPP Act*, the Commissioner may comment on the privacy implications of existing or proposed legislative schemes or programs of public bodies.

The critical question for me was whether the collection of the personal information of customers, without their consent, could be justified. One of the basic principles of the *ATIPP Act* limits the collection of personal information to only what is necessary. The public body responded with assurances that both the *Fuel Oil Tax Act* and the *ATIPP Act* authorize the collection of the information.

29. No personal information may be collected by or for a public body unless

(c) that information relates to and is necessary for carrying out a program or activity of the public body.

I agree there is sufficient authorization in the legislation for the collection of the personal information for law enforcement purposes, even without the knowledge or consent of the persons the information is about. However, the *ATIPP Act* intends public bodies to use that authorization judiciously. I expressed the view that a public body should establish its own written rationale for the amount of personal information needed for a particular purpose. The response from the public body in this case suggests the need for information does not require justification so long as its collection is authorized by the legislation. I conveyed my concern that the distinction between what is authorized and what is necessary has been missed or disregarded.

My responsibilities under section 42 of the *Act*, in these circumstances, are limited to commenting on legislative schemes or programs. It is inappropriate for me decide the issues raised or to make recommendations because of my dual responsibility to conduct reviews, including the review of a complaint by someone that their personal information has been collected, used or disclosed by a public body in a way that is not in compliance with the *ATIPP Act*. Therefore, it is important to maintain sufficient objectivity to prevent such a review from being compromised by any decision or determination I make in commenting on a program of a public body under section 42 of the *Act*.

One of the basic principles of the *ATIPP Act* limits the collection of personal information to only what is necessary.

The distinction between what is authorized and what is necessary has been missed or disregarded.

iPHIS — Phase 1

The Department of Health and Social Services submitted a draft Privacy Impact Assessment (PIA) for the Commissioner's comments. The PIA was in relation to a new initiative intended to automate the existing manual system of tracking immunization information at the Whitehorse and Haines Junction Health Centres. This is Phase 1 of implementing the Integrated Personal Health Information System (iPHIS), a program leading to the creation of electronic health records.

Since this was a draft PIA, my comments took the form of suggestions to the public body for strengthening the document and providing the kind of detail that would better identify the privacy impacts of the program. The PIA could also serve as a reference document for the next stages of this important and privacy-sensitive project.

As with most PIA's dealing with personal health information, I found the weakest part of the assessment to be the aspect of 'consent'. I commented on the need for a more thorough discussion to take the following points into consideration.

I found the weakest part of the assessment to be the aspect of 'consent'.

There has, in the past several years, been a great deal of interest in the topic of how patients can exercise an appropriate level of control over their personal health information in the face of emerging technology. On the one hand the technology is seen to have enormous potential for improving the delivery of health care to Canadians because of the speed and the amount of data that can be transmitted electronically. On the other hand, great concern has been expressed about being able to respect the personal privacy of patients in the process.

There is general agreement that the key is to involve the patient in the collection, use and disclosure of his or her personal health information and to obtain consent. Privacy experts have introduced various levels and forms of consent, including such terms as "informed consent", "expressed consent", "implied consent" and "deemed consent". However, health professionals are not all in agreement on which of these terms apply to various situations in the delivery of health care.

The other aspect that raised concern is the lack of a comprehensive regulatory framework within which programs involving the handling of personal health information can operate in the Yukon.

Some have adopted the concept of a "circle of care" within which the client is deemed to have given consent to the sharing of personal health information. For example, a doctor orders a series of tests and blood work for a patient, and consults with specialists in order to make a diagnosis. Is it necessary to inform the patient of the specific details and obtain written consent to share the patient's personal health information in this way? Or can the doctor assume the patient consents to this because it is part of the care being provided to the patient?

Bringing these discussions back to the immunization tracking program, I suggested that perhaps it is possible to identify the possible uses of the personal information within this particular program, and to obtain full expressed consent.

The other aspect of the PIA that raised concern with me is the lack of a comprehensive regulatory framework within which this, and other programs involving the handling of personal health information, can operate in the Yukon. The *ATIPP Act* covers health centres in the territory operated by the Government of Yukon. The federal legislation covers information used for commercial purposes, which would apply to pharmacies and private medical clinics. However, the Whitehorse General Hospital and self-governing First Nations in the territory have no legislative framework for regulating the collection, use and disclosure of personal health information.

I look forward to reviewing and commenting on the final Privacy Impact Assessment.

Information and Privacy Issues

30-day time limit and fees

Under the section 42 general powers provisions, I investigated a complaint that the Department of Justice (the public body) did not respond to an access request within the time required by the *Act*.

The access request involved an estimate of fees and later a request for a waiver of fees. The *ATIPP Act* requires a full response to an applicant within 30 days, unless an extension of time is granted by the Records Manager.

The investigation dealt, in part, with the dilemma faced by a public body when a good portion of the statutory 30-day time limit is taken up by the administrative requirement to:

- prepare and present to the applicant an estimate of fees
- await the applicant's response to the fee estimate
- consider a request by the applicant for a waiver of the fees

These procedures, prescribed by the *Act*, can eat up a good portion, if not all, of the 30 days. Under section 12, a public body may ask the Records Manager for a reasonable extension of time. However, the grounds for such an extension do not include these administrative procedures, so the Records Manager is not authorized to grant an extension for that reason.

In other jurisdictions, Alberta and BC for example, the practice is to 'stop the clock' when awaiting a response to an estimate of fees, or when a request for a waiver of fees is processed. This is because the *Act* and regulations in those jurisdictions expressly provide for such a practice, or the legislation can be interpreted to allow it.

Legal research, statutory interpretation, and an examination of the legislature's intent, in our case brought me to the conclusion a clock-stopping approach is not possible. The Act clearly requires a response that is "open, accurate and complete" to be made within the statutory 30-day time frame.

The public body, on receipt of the investigation report and after conducting its own internal review, accepted my conclusion. There is agreement that if a clock-stopping practice is to be introduced, an amendment to the *ATIPP Act* is necessary.

If a clock-stopping practice is to be introduced, an amendment to the *ATIPP Act* is necessary.

Access request from government agency

Sometimes a Yukon Government department or agency is interested in accessing information from another government department or agency, but there is either not an established interagency protocol or there is a question about whether the information should be shared.

In one case, an agency made a request for access under the *ATIPP Act* to records of the Public Service Commission and the access was refused. The agency asked me to review the decision to refuse access.

Both parties agreed to mediation, but before the mediation could be arranged the applicant agency withdrew its request for review. Although in this case the right of access was not dealt with, the question of whether the *ATIPP Act's* access provisions contemplate requests for information between agencies of government is an important one.

The *ATIPP Act* provides strong privacy protection measures that public bodies must consider when sharing information with each other.

The authority for sharing information between departments and agencies of the Yukon Government is normally found in the enabling legislation of government programs. The access provisions in the *ATIPP Act* are specifically created for purposes of giving individuals outside government access to records held by public bodies. Nevertheless, the *ATIPP Act* provides strong privacy protection measures that public bodies must consider when sharing information with each other.

No records found

Occasionally, a public body's response to an applicant's request for information is that no records were found. This answer is difficult for some applicants to accept when they have a basis for believing the requested information does exist. In these cases they ask the Commissioner to review the public body's decision.

There are few exceptions which would result in a person being refused access to their own personal information.

This particular response of "no records found" is not a decision that is reviewable under the *ATIPP Act*. Under section 48 of the Act, the Commissioner's review authority is limited to a restricted number of decisions by public bodies under the Act. A public body's failure to find responsive records is not included.

However, the Commissioner has the responsibility to monitor the administration of the *ATIPP Act* to ensure its purposes are achieved. One way the Commissioner may discharge that responsibility is by investigating complaints, including a complaint that there was an inadequate search for records.

One such case provides an illustration of this. A person initially asked for a review, then made a complaint to me that the Department of Justice had failed to respond openly, accurately and completely to an access request, as required by the *ATIPP Act*. The public body responded that no records were found, when there was a clear indication to the applicant that the records did in fact exist.

After initial investigation, the public body determined that the records did, indeed, exist. A revised response was given to the applicant, and this settled the matter.

Personal information — views or opinions

The *ATIPP Act* gives individuals a specific right of access to their own personal information, including the recorded views or opinions by other people about them. There are few exceptions which would result in a person being refused access to their own personal information.

The *ATIPP Act* defines "personal information" as any recorded information about an identifiable individual. This includes the recorded views or opinions an individual expresses, unless they are about someone else, in which case they become the personal information of the person the views or opinions are about.

In one instance, an applicant asked for records from Health and Social Services. The public body decided to remove or obliterate, from the responsive records, certain personal information about the applicant, as well as about a third party. On review, the parties entered into mediation. The public body was concerned about its responsibility to grant access to the applicant's personal information while appropriately protecting the privacy of any third parties.

In the course of mediation, the records were reviewed to determine whether each opinion or view expressed related to the applicant or a third party. Once that was done, it was relatively easy to distinguish whose personal information was at issue. This analysis was helpful in separating the applicant's personal information from that of third parties. The public body was able to provide the applicant's personal information while still properly severing third party personal information from the records. Mediation was successful in settling the matter under review.

Reviews involving business information

Two reviews involved decisions by the public body to grant applicants access to business information of third parties. In both cases the information pertained to applications by businesses for funding under a government program. The public body decided the information did not meet the criteria under the *ATIPP Act* requiring its protection from disclosure. Before disclosing the material to the applicants, however, the public body gave notice to the third party businesses as set out in section 26 of the *Act*, and afforded them the opportunity to give reasons why the information should not be disclosed. Despite the objections of the third party businesses, the public body decided the information should be disclosed to the applicants.

The third party businesses asked me to review the decision of the public body to disclose the information. These requests raised the question of whether the *ATIPP Act* gives a right of review to third parties when the disclosure of business information is in dispute. This is because section 48(4), giving the right of review to third parties, says, "a third party notified under section 26 of a request for access may ask for a review of a decision by a public body to disclose personal information about the third party" (my emphasis).

Because a section 26 notice to a third party is for both personal information and business information, I sought a legal opinion on the question of whether the *Act* intended to exclude the review of decisions involving third party business information. I accepted the opinion that the omission of the reference to business information was a drafting error.

48(4) A third party notified under section 26 of a request for access may ask for a review of a decision by the public body to disclose personal information about the third party.

While a review of case law indicates the courts are reluctant to recognize error or accident in the drafting of legislation, where the obvious mistake or error leads to highly unacceptable consequences the Court retains a limited jurisdiction to make corrections. I concluded the omission of a reference to information to which section 24 (business information) applies in section 48(4) of the *Act* is an obvious drafting error leading to a result that cannot have been intended by the legislature. This mistake therefore falls within the limited circumstances in which I am permitted to correct the mistake by reading into section 48(4) the appropriate reference to business information.

I therefore completed the reviews. In both cases I determined the information at issue was not covered by the criteria for protecting business information from disclosure.

The benefit of mediation

When the Commissioner begins a review of a public body's decision to refuse an applicant access to records, or to certain information within records, the first step is often to authorize a mediator to investigate and try to settle the matter under review. If mediation fails, the *Act* requires the Commissioner to conduct an inquiry.

It happens with some frequency that either the public body or the applicant, or both, do not agree to mediate because they understand the issues to be straightforward and consider mediation a waste of time. The Commissioner urges the parties, at all times, to enter into mediation for a variety of reasons. Sometimes, if the applicant better understands a requirement under the *Act* to withhold certain information, he or she will accept the decision. At other times a public body may recognize that a simple administrative error in its written response has not properly conveyed the reasons for the refusal.

Mediation is always an opportunity for the public body or the applicant to clarify and resolve any issues.

A case in point. The Department of Education responded to an access request with a letter, refusing access to all the requested records on certain grounds. However, the accompanying Schedule of Records did not properly correspond with the contents of the letter. The applicant asked me to review the public body's decision. The public body advised it was not prepared to mediate, triggering an inquiry.

Where there are issues requiring clarification, I will often conduct a pre-inquiry conference. After doing so in this case, it became apparent to the public body that it only needed to correct its response to resolve the matter. After receiving a corrected response, the applicant withdrew the request for review, making an inquiry unnecessary.

The issue here was one of clarity of the response. Mediation is always an opportunity for the public body or the applicant to clarify and resolve any issues, including clerical or other inadvertent mistakes which can be discussed once the parties agree to mediation.

Third party notification

When a request is made for access to records that include the personal information of third parties, the public body must determine whether the disclosure of the third party personal information will be an unreasonable invasion of the third party's privacy. Public bodies are assisted in this determination by specific provisions in the *ATIPP Act* that identify what is deemed to be an unreasonable invasion of a third party's privacy. However, there are also certain relevant circumstances described in the *Act* that a public body must consider before refusing access.

If the public body decides to give an applicant access to the personal information of a third party, before doing so it must notify the third party of its intent, in order to provide the third party with an opportunity to make written representation explaining why the information should not be disclosed. The public body must consider the third party's explanation, and then decide whether it will give the applicant access. If the decision is to give access, the third party has a right to ask the Commissioner to review the decision before the access is given.

26.(1) Before giving access to a record that a public body believes contains information to which section 24 or 25 applies, the records manager must, where practicable, give the third party a notice

(a) stating that a request has been made by an applicant for access to a record containing information the disclosure of which might affect the interests or invade the personal privacy of the third party;

(b) describing the contents of the record; and

(c) stating that, within 20 days after the notice is given, the third party can make written representations to the records manager explaining why the information should not be disclosed.

However, there is no obligation under the *Act* for a public body to give any notice to a third party if, after examining the responsive records, the public body decides to refuse the applicant access to the third party information. Nevertheless, the applicant has a right to ask the Commissioner to review the public body's decision to refuse access to the third party information. This sometimes sets up a situation where, on review, the Commissioner must decide whether the third party ought to be given notice of the review and have an opportunity to participate as a party at inquiry, before deciding whether the applicant has a right of access to the third party's personal information.

In one such review, I invited the public body (the Department of Justice) and the applicant to make submissions on a procedural issue of whether the third party, whose information was at issue, ought to be given notice. The public body argued the intent of the *Act* is that a third party should not be involved unless a decision is made to give access to the third party's information. The public body stated, "The third party has the right not to be unnecessarily or unjustifiably subjected to unsolicited requests or debate about the use or disclosure of his or her personal information. A section 26 notice is an intrusion on the third party."

The public body proposed a two-phase approach whereby I would proceed with the inquiry and if, at any point, there were grounds to decide in favour of giving access, notice could then be given to the third party. I found that the public body made a compelling argument and agreed with its reasoning and its procedural approach to the inquiry. In this case, I found the applicant did not have a right of access to the third party information, so the issue was decided without having to involve the third party.

Time limit for responding

The *ATIPP Act* requires a public body, through the Records Manager, to respond to an access request openly, accurately, and completely within 30 days of receiving the request. Sometimes the search for records becomes difficult because the records exist in multiple locations, or preparing the records for disclosure is a complicated task because the information being sought is intertwined with personal information of third parties which the public body may be required to withhold.

11. The records manager must make every reasonable effort to respond without delay and must respond not later than 30 days after a request is received unless the time limit is extended under section 12.

In such cases, the public body may ask the Records Manager for an extension of time. However, a reasonable extension may only be granted on limited grounds, set out in section 12 of the *Act*. These grounds include situations where:

- the applicant has not provided enough detail to identify the requested record(s); or
- a large volume of records must be searched and meeting the time limit would unreasonably interfere with the operations of the public body; or
- the public body needs more time to consult with a third party or another public body before deciding whether to give the applicant access;
- or a third party has asked for a review.

If a time extension has not been requested by a public body, or the Records Manager has not granted the request, and the public body has not responded to the applicant in the statutory 30 day time frame, the failure to respond is to be treated as a decision to refuse the access. This is commonly referred to as a 'deemed' refusal.

The Commissioner found that the public body made a compelling argument and agreed with its reasoning and its procedural approach to the inquiry.

49(2) The failure of the records manager or of a public body to respond in time to a request for access to a record is to be treated as a decision to refuse access to the record.

An employee of Health and Social Services made a request in early May, 2004 for access to personal information on file with the department. After making several inquiries, the applicant was told in November that a response would be forthcoming in December 2004.

The applicant was not satisfied and asked the Commissioner to review the department's response. A review, on the basis of a deemed refusal, was begun. Mediation in this case was successful and the matter was settled.

However, this case was one of several that prompted an investigation on the administration of the *Act*. The investigation report detailed the requirements of the *Act* in responding to access requests, with particular emphasis on the need to seek extensions of time when grounds exist.

These cases, along with my investigation report, led to the establishment of a working group within Health and Social Services to set internal procedures and guidelines for responding to complex and difficult access requests.

ATIPP Workshop
February, 2005

A two-day training workshop for departmental ATIPP coordinators took place at Yukon College in February, 2005. The agenda focused on the access to information provisions of the *Act*. Topics included:

- transparency and accountability
- access as a default position
- specified privacy exceptions
- the duty to assist
- access analytical tools, precedents and resources
- responses to access requests
- personal information of applicants vs. third party personal information
- business information exceptions
- schedules of records and estimates of costs
- timelines and time extensions
- review rights
- investigations and mediation in reviews
- inquiries by the Information & Privacy Commissioner

Our keynote speaker was B.C.'s Information and Privacy Commissioner, David Loukidelis. His address to ATIPP departmental coordinators was entitled, "Access to Information and Protection of Privacy Landscape — Canada and Beyond. You are not Alone." Taking full advantage of his time with us, we engaged him in the workshop sessions as a coach and in a panel discussion on ATIPP principles and practices. We are grateful to Mr. Loukidelis for generously sharing his time and expertise.

The workshop can best be summarized by quoting from my letter to John Stecyk, Deputy Minister for Highways and Public Works, the ministry responsible for the *ATIPP Act*:

I am writing to express my appreciation for the department's support of the ATIPP Workshop and to extend my congratulations to the people in ICT who worked so hard to make it a success.

As you are aware, the project was several months in the planning and involved a close collaboration between Judy Pelchat's office and mine. The aim was to create a forum within which the expertise of departmental ATIPP Coordinators could be further enhanced. We developed concurrent workshops where coordinators worked on various aspects of the administration of access to information requests. The feedback on these workshops was excellent and the coordinators have urged us to make this at least an annual event.

Our special guest and keynote speaker was David Loukidelis, the Information and Privacy Commissioner for the Province of British Columbia. We were also able to have Mr. Loukidelis make a major presentation to coordinators and Yukon Government managers at a Speaker's Series event organized by PSC – Staff Development. The response to this lecture was quite overwhelming, to the point where the organizers found it necessary to change venue to accommodate all the participants.

The feedback was excellent and the coordinators have urged us to make this an annual event.

This would not have been possible without your department's commitment of time, energy and resources. I want to particularly draw to your attention the extraordinary work of Judy Pelchat and her staff at a time when I know their office was stretched beyond capacity with the volume of work.

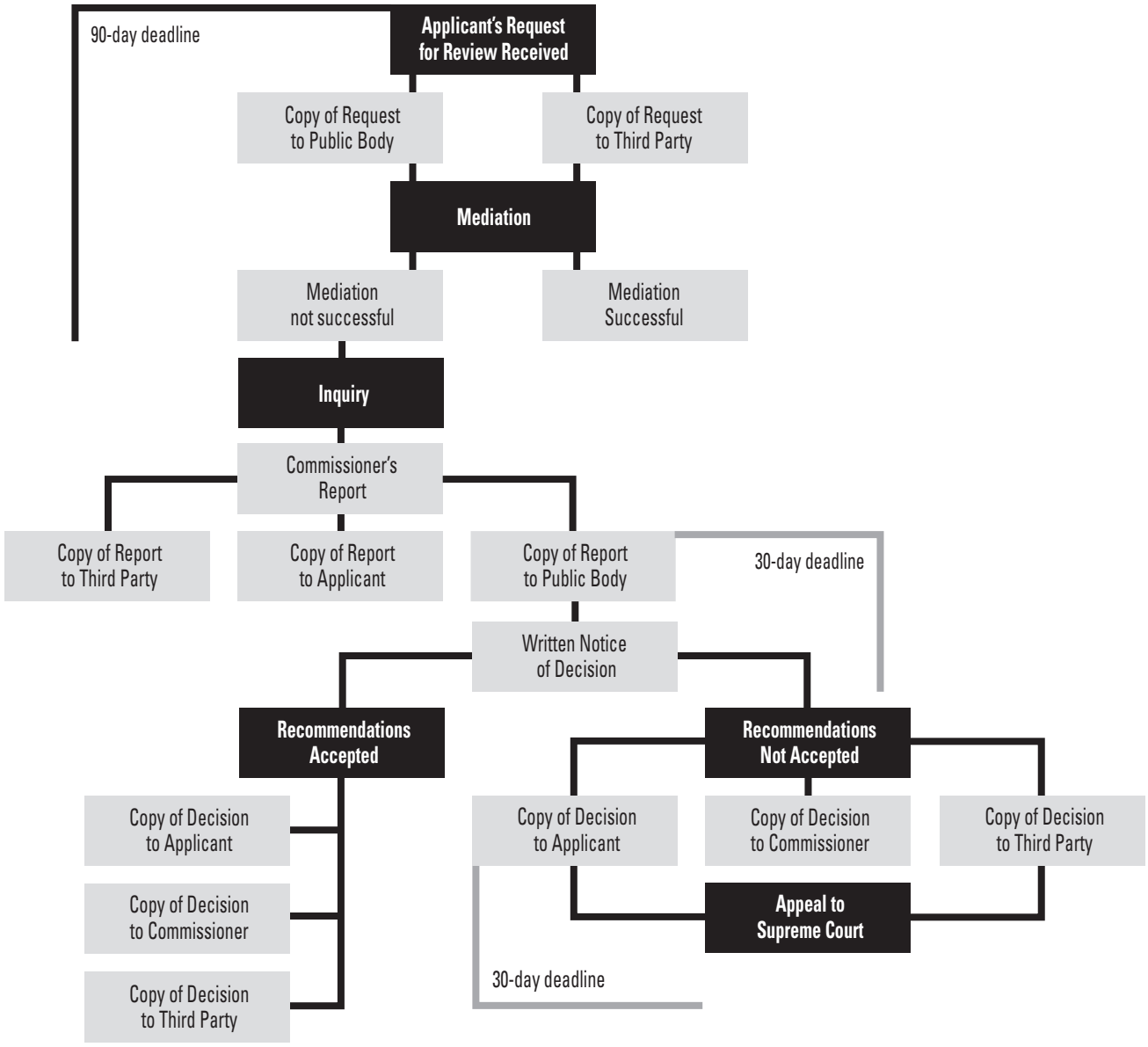
Their commitment to the workshop was very apparent and appreciated by everyone. It was a pleasure to work with them on this project.

I am very grateful for the support of the Director and CIO, Siegfried Fuchsbichler, and yourself, as Deputy Minister, in making resources available for this to happen.

This workshop has set the stage for similar endeavours in the future and I look forward to continued involvement with you and your officials to meet those expectations.

Plans are under way for another workshop with a focus on Privacy Impact Assessments.

Request for Review Flow Chart



Statistical Summaries

ATIPP FILES BY LEGISLATION

SECTION OF THE *ACT*	DESCRIPTION	OPENED IN 2005
42(b)	General powers to receive complaints or comments from the public concerning the administration of the *Act*, conduct investigations into those complaints, and report on those investigations.	2
42(c)	General powers to comment on the implications for access to information or for protection of privacy of existing or proposed legislative schemes or programs of public bodies.	7
48(1)(a)	Request for a review of a refusal by the public body or the records manager to grant access to the record.	4
48(1)(b)	Request for a review of a decision by the public body or the records manager to separate or obliterate information from the record.	1
48(4)	Request by a third party for a review of a decision by a public body to disclose personal information about the third party.	3

S.48 REQUESTS FOR REVIEW

Brought forward from 2004		5
Received in 2005		8
Economic Development	3	
Education	2	
Health and Social Services	2	
Public Service Commission	1	
TOTAL		**13**
Completed in 2005		13
To inquiry	6	
Successfully mediated	3	
Discontinued	4	
Carried forward to 2006		–

S.42(b) COMPLAINTS

Brought forward from 2004		4
Received in 2005		3
TOTAL		**6**
Completed in 2005		1
Investigated	–	
Settled	1	
Carried forward to 2006		5

ATIPP REQUESTS FOR INFORMATION

TOTAL	**64**