

# ipc Privacy matters

2011 Annual Report of the Yukon Information & Privacy Commissioner



Just having an *ATIPP Act* is not enough. To achieve its goals the *Act* needs to be supported by meaningful policy, guidelines, practices and knowledge.

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**Case Summaries** These stories are good examples of how our office helps Yukoners and the Yukon government with privacy and access to information issues. Names have been changed for confidentiality.

## We have ATIPP, but it needs support

As I come to the end of my five-year term as Information and Privacy Commissioner (IPC), it is important to think about the Yukon access and privacy scheme and consider – Is it working? How could it be better?

Since the introduction of the *ATIPP Act* scheme in 1996, some aspects of it have developed well:

- There are access and privacy champions throughout the public service.
- Each public body has an ATIPP Coordinator committed to their work.
- Responses to access requests are usually done within the 30-day limit.
- More and more, public bodies are aware of the value of consulting with my office for guidance on access and privacy issues.

Government has made progress by:

- expanding the scope of the *Act* by naming new public bodies;
- working to draft a *Health Information Act* to regulate personal health information;
- initiating a systematic approach for electronic health records;
- recognizing the benefit of using Privacy Impact Assessments or the ATIPP Compliance Assessment tool to identify issues when developing new programs; and
- reviewing department records management systems.

Perhaps the most significant progress has been made with the development in 2011 of government policy on ATIPP roles and responsibilities and a guide for managers. Together they outline the responsibilities and provide guidance for deputy ministers, the records manager and department managers to enable consistent practices for interpretation and application of the *Act*.

While these initiatives are all positive steps, they do not go far enough and it has taken 15 years to get here. Access and privacy are dynamic concepts that are evolving and require a continuing commitment by government.

### Access and Privacy—the way of the future

Access and privacy is not a passing fad. Government cannot treat it as an unnecessary burden. Although it is complicated, time consuming and costs money, it is here to stay. The public has grown to expect open government through access to information, and that their personal information, in the hands of government, will be kept private.

### Government-wide action needed

The time has come for government officials and senior management to direct the cultural change needed to meet the future. They must embrace the spirit and intent of the law. They must provide both the foundation and the tools to get the job done. The following initiatives should be implemented across government to help modernize and integrate Yukon's access and privacy scheme:

- Public bodies must embrace the right to access information stated in the law, and resist the tendency to withhold information without valid reason.
- An updated and coordinated record management system is required so that public bodies can respond efficiently to access requests and protect privacy.
- Training and consistent support for ATIPP Coordinators is needed. ATIPP Coordinators must be empowered and given the tools to develop expertise in the administration of the *ATIPP Act*.
- ATIPP guidelines and practices must be developed to help ATIPP Coordinators and others comply with the *Act* and apply it consistently.
- A privacy breach protocol is required to ensure proper management and remediation when a privacy breach occurs.
- In developing new laws or programs, routine consultation with the IPC about the implications of access and privacy will help achieve well designed, ATIPP-compliant results. Consultation is still often not done, or is done too late in the process to have meaningful impact.

Future growth also requires:

- completion of the *Health Information Act* legislation to ensure access and privacy in relation to personal health information; and

- a comprehensive strategy for dealing with the access and privacy issues of projects that collect, use and disclose personal health information (eg. 811 Health Line, teleHomecare, teleradiology).

Just having an *ATIPP Act* is not enough. To achieve its goals the *Act* needs to be supported by meaningful policy, guidelines, practices and knowledge.

### Thank you

Everything I have accomplished here in the past 5 years has been done with the dedicated support of the three remarkable women that staff this office. I am proud of the work we have done together and I thank them for their friendship and guidance.

I also thank all the individuals and departments that recognized our common goals and helped us achieve them. Good communication is a powerful tool for solving problems.

It has been my honour and privilege to serve the Yukon as Ombudsman and Information & Privacy Commissioner.

Tracy-Anne McPhee  
Ombudsman  
Information and Privacy Commissioner



## Is WGH newborn screening ignoring ATIPP?

**2011 Investigation:**  
Yukon Hospital Corporation –  
Whitehorse General Hospital (WGH)

Questions have been raised regarding privacy concerns over newborn blood collection. The IPC is still awaiting answers.

Every baby born in Yukon qualifies for screening for a number of treatable disorders. Within 24–48 hours of birth, blood is collected from each child and a sample is sent to the newborn screening lab in British Columbia initially for testing and then storage.

Litigation in British Columbia raised concerns about possible privacy violations in relation to the collection, use and storage of this information. Since this includes Yukoners' information, we decided to review WGH's program to determine whether it operated in compliance with Yukon's access and privacy legislation.

WGH has ignored repeated requests to provide information to the IPC. The information would allow us to determine if WGH's newborn screening program meets the ATIPP requirements for collection, use, disclosure and disposal of newborns' personal health information.

This is not about newborn screening. No one questions the health benefits of newborn screening for Yukon families. But when concerns are raised about possible privacy violations in relation to information collected from Yukoners, the public body must cooperate to allow us to determine if the program is compliant with the law. WGH has not answered letters or provided any explanation for why it hasn't responded to our request for information. ■

## Contact Us

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## How much do they “need to know”?

**Right to Know Day** began in 2002 and has grown into a worldwide, week-long event each September to raise global awareness of the right to access government information and to promote access to information as a fundamental human right. Annual local events help Yukoners learn about their access and privacy rights.

### Why do we need an ATIPP Act?

The two purposes of the *Access to Information and Protection of Privacy Act* are to make public bodies more accountable to the public and protect personal privacy. All government departments, and certain other named or defined organizations, are called public bodies in the *ATIPP Act*.

What the *ATIPP Act* says, in plain language, is that people have the right to information, especially their own information, unless the *Act* stipulates a reason why they cannot have it. It also says that a public body must protect, and keep private, all personal information in its custody. Lastly, the *Act* states the Information and Privacy Commissioner is responsible for ensuring public bodies comply with the law.

#### 2011 Investigation: Health & Social Services

Phyllis understood that Health & Social Services (HSS) needed information about her disability to assess her eligibility for a supplementary allowance. She questioned whether so much personal detail was required.

Phyllis applied for the Yukon Supplementary Allowance (YSA) through HSS. YSA is available to an individual who meets certain conditions, including not being able to work because of a severe and prolonged disability. The application required that Phyllis's doctor complete a medical form that asked for past and present physical and mental health information. The form also asked for details of a physical examination and personal habits. When the doctor sent in the form, he attached a photocopy of a specialist medical report.

Phyllis understood that HSS required information about her disability to assess

her eligibility. She consented to HSS collecting information from her doctor. But she questioned whether HSS required all of the detailed personal health information asked for on the form or contained in the specialist report, to make a decision. She came to our office.

We reviewed the medical form issued by HSS. Phyllis was right to question HSS's authority to collect some of the personal health information.

In order to ensure privacy protection, the *ATIPP Act* sets out how and why public bodies can collect personal information. A public body can only collect personal information if they have the consent of the individual to do so and can only collect what is necessary to carry out the program. The law requires a public body to determine the exact personal information it needs to administer a program, and then design a form to collect that personal information and no more.

HSS reviewed its forms and agreed it was over-collecting personal health information. HSS changed its YSA forms so it would be collecting only the personal information that was absolutely necessary to make a decision about eligibility. Because doctors and others sometime send more information than needed, HSS also agreed to develop a policy to help staff deal with unsolicited and irrelevant personal health information sent to them in the application process. ■

Forms are a common way of collecting personal information. Public bodies should regularly review paper and electronic forms used to collect personal information to ensure that they comply with the *ATIPP Act*.

## Teaming up to retrieve history

#### 2011 Mediation Case: Yukon Archives

A private company's search for historical records was coming up short. IPC stepped in to see if we could lend a hand.

ABC consulting company was searching for some historical records. It made an access request to Yukon Archives for file lists of specific historical records. Yukon Archives responded and provided paper and electronic file lists to ABC. However, ABC

was concerned that many of the records they expected Yukon Archives to have were not on any of the lists. ABC brought its concerns to the IPC.

Through mediation conducted by our office, Yukon Archives identified it had additional information from a database of government department records that it could give to ABC. Also, ABC learned that many historical records it assumed were located at Yukon Archives had not yet been transferred there. This helped ABC in its continued search for historical government records. ■

## Yukon Boards and Committees should protect your information

There are over 120 boards, committees, tribunals, councils and agencies that carry out important functions related to government, and in the process may collect sensitive information from people and businesses. Many of these bodies are not subject to Yukon's *ATIPP Act*, so they are not required by law to provide access to information or protect privacy of personal information.

Government has proposed criteria for deciding which bodies should be designated

a “public body” under the *ATIPP Act*. In the summer of 2011, in a written submission to government, I identified two main criticisms of the proposed criteria. They are:

- that the criteria are not clearly and substantively linked to the purpose of the *ATIPP Act* and are too narrow which may result in the exclusion of bodies that should be subject to the *Act*, and
- if the criteria operate as guidelines only, as proposed by government, they will not provide certainty as to which bodies will become public bodies.

My submission is available on our website at [www.ombudsman.yk.ca](http://www.ombudsman.yk.ca)



Left to right: Stephen Lewis, keynote speaker; Suzanne Legault, Information Commissioner for Canada; Tracy McPhee, IPC

*“I was honoured to introduce keynote speaker, Stephen Lewis, at the International Conference of Information Commissioners in Ottawa last October. The audience from all over the world were inspired by his message that access to information is a fundamental human right.”*

Tracy McPhee, IPC

## Statistics

It is always difficult to report complex work with simple numbers. No two matters brought to the Information and Privacy Commissioner are the same. Some files can be resolved in a few days, while others can take a few years. If the Information and Privacy Commissioner does not have jurisdiction, we assist by referring the individual to the authority that can deal with their complaint.

2011	
Requests for Review	14
Investigations	9
Comment Files	11
Early Resolution Files	43
Non-Jurisdictional Matters	10
<b>Total New Files for 2011</b>	<b>87</b>
Carried Forward from 2010	26
<b>Total Files for 2011</b>	<b>113</b>
Files Completed in 2011	78
Carried Forward to 2012	35

## Budget Summary

The budget summary below covers the operations of the Office of the Ombudsman and the Information and Privacy Commissioner for the period from April 1, 2011 to March 31, 2012.

Category	Expenditures
Personnel	\$401,000
Office and Operations	\$153,000
Supplies and Services	\$7,000
Capital Items	\$5,000
<b>TOTAL</b>	<b>\$566,000</b>

## Raising Awareness

The Information and Privacy Commissioner's goal of raising awareness about the work of her office was achieved through many meetings and presentations in 2011. Some of the groups she met with were school kids, college students, MLAs, seniors, club members, international information commissioners, deputy ministers, government staff, college officials and members of the public.